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MONTANA RETIREMENT LAWS

RELATING TO
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
GAME WARDENS' RETIREMENT SYSTEM
JUDGES' RETIREMENT SYSTEM
SOCIAL SECURITY



COMPILED FOR THE
BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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PUBLIC EMPLOYEES' RETIREMENT ACT

Note: The Public Employees' Retirement Act is compiled in Title 68, chapters 1 through 13, Revised Codes of Montana, 1947.

CHAPTER 1

PURPOSE OF ACT—DEFINITIONS

Section 68-101. Purpose of act—public employees' retirement system.
68-102. Definitions.

68-101. Purpose of act—public employees' retirement system. The purpose of this act is to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees, and to that end providing a retirement system consisting of retirement compensation and death benefits.

History: En. Sec. 1, Ch. 212, L. 1945.

References

State ex rel. Jardine v. Ford, 120 M 507,
188 P 2d 422, 423; State ex rel. Ebel v.

Schre, 130 M 537, 305 P 2d 350, 353;
State ex rel. Morgan v. White, 136 M 470,
348 P 2d 991, 997.

68-102. Definitions. The following words and phrases used in this act, unless a different meaning is plainly indicated in the context, shall have the following meanings:

(a) "Retirement system" shall mean the "public employees' retirement system" created by this act.

(b) "Contracting city" shall mean any municipal corporation in the state which has elected to have all, or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose.

(c) "Contracting county" shall mean any county in the state which has elected to have all or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose. For the purpose of applying the provisions of this act to counties, wherever in this act reference is made to "city," "contracting city," "city employee," "city clerk," "municipal corporation," or "legislative body" of any city or municipal corporation, such words shall be construed to read, respectively, as "county," "contracting county," "county employee," "county clerk," "county" or "board of county commissioners" of any county.

(d) "Public agency" shall mean any public district, local housing authority, or local authority, or public body whatsoever.

(e) "Contracting public agency" shall mean any public agency in the

state which has elected to have all or any part of its employees become a part of the retirement system and which has contracted with the board for such purpose. For the purpose of applying the provisions of this act to public agencies, whenever in this act reference is made to "city," "contracting city," "city employee," "city clerk," "municipal corporation," or "legislative body" of any city or municipal corporation, such words shall be construed to read, respectively, as "public agency," "contracting public agency," "public agency employee," "secretary of governing board or analogous authorized employee of the public agency," "public agency," or "governing board or head of a public agency not managed by a board."

(f) "State employee" means any person employed by the state in any capacity whatever and whose salary is paid either by warrant of the state auditor and from the fees or income of any department or agency of the state, excepting all elective officers and persons directly appointed by the governor, who do not elect membership under the provisions of section 68-203, court commissioners, and members of any state board or commission who serve the state intermittently and are paid on a per diem basis (except as herein otherwise provided). "State employee" means further any employee under direct state supervision or functional state supervision as certified by the head of the state department concerned and approved by the board of administration of the public employees' retirement system, who is paid either fully or in part from federal funds, but is not subject to federal retirement system.

(g) "Head of department" means the head of any department, institution or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the state board of examiners, state auditor and state treasurer for payment.

(h) "Member" shall mean any person included in the membership of the retirement system set forth in section 68-202 and not excluded in section 68-203.

(i) "Board" shall mean the "board of administration" created in this act.

(j) "Retirement fund" shall mean the "public employees' retirement fund" created and established in section 68-405.

(k) "State service" shall mean service rendered as an employee, hired or appointed, of the state or its university or any of the colleges, schools, components or units thereof for the purpose of this act, service rendered as an employee of any contracting city for compensation, and, for the purposes of this act, a member shall be considered as being in "state service" only while he is receiving compensation from the state, or its university as aforesaid or the contracting city for such service, except as provided in subdivision (f) of section 68-501, or, while serving as a member of the legislative assembly or as lieutenant governor of the state of Montana whether or not he receives compensation from the state.

(l) "Prison employee" for the purpose of the retirement system, means persons appointed by the warden of the state prison or by the state board of prison commissioners.

(m) "Prior service" shall mean all state service rendered before the first day of July, 1945; and all state service rendered as an employee of a contracting city before the effective date of the city's participation in the retirement system, and allowable as provided in subdivision (h), section 68-501. Employees of a contracting city shall receive credit for prior service only if the election of the contracting city to participate in the Public Employees' Retirement Act is filed with the board on or before, but not after July 1, 1950. Notwithstanding the sentence preceding, "prior service" as applied to a person, employed by the state, including the university, who became a member while employed on a part-time basis, because of amendments to this retirement act, or as applied to a person who became a member prior to said amendments, because of a change in the employment status to a full-time basis, shall mean all state service rendered before the effective date of said membership. Prior service includes all prior service as a member of the legislative assembly or as lieutenant governor of the state of Montana. With respect to the optional retirement provisions set forth in section 68-901 (m), R. C. M. 1947, "prior service" shall mean all service rendered before July 1, 1945.

(n) "Continuous service" as applied to "prior service," except as to a member of the legislative assembly or a lieutenant governor of the state of Montana, shall mean all prior service, regardless of interruptions in such service, and as applied to service as a member shall mean uninterrupted employment in state service except as provided by subdivision (h) section 68-501, and, except that when for any cause whatever, a member discontinues state service but subsequently re-enters such service within three (3) years from the date of the discontinuance, such interruption shall not be deemed to break the continuity of service.

(o) "Beneficiary" shall mean any person in receipt of a pension, annuity, retirement allowance, death benefit or any other benefit provided by this act.

(p) "Compensation," except as applied to a member of the legislative assembly or a lieutenant governor of the state of Montana, electing the optional retirement provisions of section 68-901 (m), R. C. M. 1947, shall mean the remuneration paid in cash out of funds controlled by the state, the university or the contracting city, plus the monetary value as determined by the board of administration, of living quarters, board, lodging, fuel, laundry and other advantages of any nature furnished by the state, the university, or the contracting city to a member, in payment of services.

(q) "Compensation earnable" by a member, except as applied to a member of the legislative assembly or a lieutenant governor of the state of Montana, shall mean the average monthly compensation as determined by the board upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, it being assumed that during any absence said member was in the position held by him at the beginning of the absence, and provided that compensation received by a member subsequent to July 1, 1952, in excess of five thousand dollars (\$5,000.00) per annum may be used as a basis of compensation for the purpose of this retirement sys-

tem if (a) he contributes normal contributions on the excess of such salary subsequent to July 1, 1952, over five thousand dollars (\$5,000.00) to his individual account in the annuity savings fund and (b) he contributes three per cent (3%) of the excess of his salary subsequent to July 1, 1952, over five thousand dollars (\$5,000.00) to the pension accumulation fund of the retirement system.

(r) "Final compensation" shall mean the average annual compensation earnable by a member during any three (3) consecutive years upon which normal contributions have been made, said years to be chosen by the member. A member of the legislative assembly, a speaker of the house of representatives and a lieutenant governor of the state of Montana electing the optional retirement provisions of section 68-901 (m), R. C. M. 1947, may include as annual compensation all or any portion of the product of his compensation per day as a member, speaker or president of the senate multiplied by three hundred sixty (360) for the purpose of computing his final compensation if he otherwise complies with the provisions of section 68-901 (m), R. C. M. 1947.

(s) "Regular interest" shall mean the average interest earned on investments made hereunder, compounded at each June thirtieth, subject to subdivision (j) section 68-501 plus such additional interest as the board may credit from year to year in accordance with the provisions of this act.

(t) "Normal contributions" shall mean contributions by members under the provisions of section 68-701 (g) to (n), both inclusive.

(u) "Additional contributions" shall mean contributions by members under the provisions of section 68-701 (k).

(v) "Accumulated normal contributions" shall mean the sum of all the normal contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(w) "Accumulated additional contributions" shall mean the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(x) "Accumulated contributions" shall mean accumulated normal contributions plus any accumulated additional contributions standing to the credit of a member's account.

(y) "Pension" shall mean payments for life derived from contributions made from the state controlled funds, or in the case of members from contracting cities from the funds of such cities, as provided in this act.

(z) "Annuity" shall mean payments for life derived from contributions made by a member as provided in this act.

(aa) "Retirement allowance" shall mean the pension plus the annuity.

(ab) "Death allowance" shall mean payments for life, or until remarriage, or until the youngest child shall attain the age of eighteen (18) years, as provided in section 68-1101.

(ac) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the board, and interest at a rate to be annually determined by the retirement board compounded annually, subject to subdivision (j), section 68-501.

(ad) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this act.

(ae) "Disability" and "incapacity for performance of duty" referred to herein as a basis of retirement, shall mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(af) "Actuary" shall mean the actuary regularly and continuously employed on a full or part-time basis, by the board of administration.

(ag) "Benefit" shall be the retirement allowance, death allowance, death benefit or refund of accumulated contributions provided by this act.

(ah) "Fiscal year" shall mean any year commencing with July first and ending June thirtieth next following.

History: En. Sec. 2, Ch. 212, L. 1945; amd. Sec. 1, Ch. 297, L. 1947; amd. Sec. 1, Ch. 188, L. 1951; amd. Sec. 1, Ch. 92, L. 1955; amd. Sec. 1, Ch. 246, L. 1959; amd. Sec. 1, Ch. 271, L. 1969.

Compiler's Notes

Section 68-405, cited in subd. (j) was amended in 1963 to abolish the public employees' retirement fund.

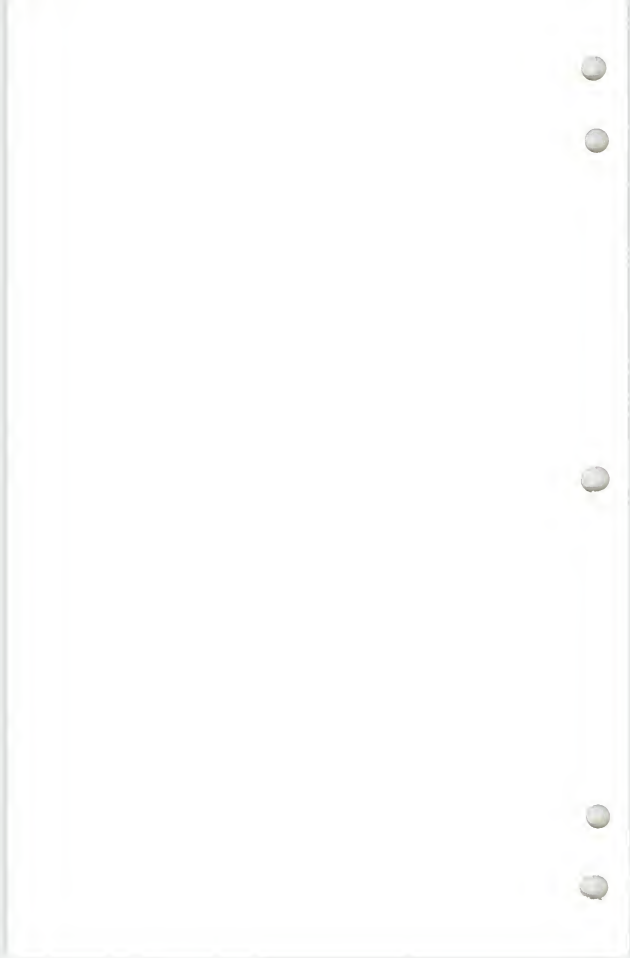
Subdivisions 68-701 (g) to (n), cited in

subds. (t) and (u), have been redesignated as sections 68-702, 68-703 (now repealed) to 68-709 respectively.

Section 68-1101, cited in subd. (ab), was amended in 1963 to delete the reference to surviving children under 18.

Subdivision (f)

The legislature by using the words "excepting as herein otherwise provided" has provided a means for all elective



officers and all persons directly appointed by the governor to become members of the system through section 68-203. Corwin v. Bieswanger, 126 M 337, 251 P 2d 252, 253.

References
State ex rel. Jardine v. Ford, 120 M 507, 188 P 2d 422, 423.

CHAPTER 2

RETIREMENT SYSTEM CREATED—WHO ARE MEMBERS

Section 68-201. Public employees' retirement system created.
68-202. Members—re-entry into state service—school district employees.
68-203. Who are ineligible to membership in system.

68-201. Public employees' retirement system created. A retirement system is hereby created and established to become effective July 1, 1945, and to be known as the "public employees' retirement system."

History: En. Sec. 3, Ch. 212, L. 1945.

68-202. Members—re-entry into state service—school district employees. (a) From and after July 1, 1955. All employees shall become members on the first day of employment.

(b) Every employee who re-enters state service shall become a member unless he has had an original election of exemption from membership and his state service was not interrupted by a break of more than one (1) month. A seasonal employee who has had an original election of exemption from membership will not be subject to the requirement regarding the break in service while continuing in his original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than one (1) month in returning to original employment in any ensuing season, such a seasonal employee shall become a member of the retirement system upon re-entry.

(c) Time during which an employee of a school district is absent from state service during official vacation shall be counted as service in determining eligibility for membership under this act.

History: En. Sec. 4, Ch. 212, L. 1945; References
amd. Sec. 2, Ch. 186, L. 1951; amd. Sec. Corwin v. Bieswanger, 126 M 337, 251 P
2, Ch. 92, L. 1955. 2d 252, 253.

68-203. Who are ineligible to membership in system. The following employees shall not become members of the retirement system:

(a) Elective officers, other than elective officers who filed with the board of administration an election in writing to become members; provided, that any person so excluded from membership, who later becomes a member hereof, shall have the option of making contributions to the retirement system in the amount which he would have contributed had he not been so excluded, and he shall then receive credit for prior service in the same manner as if he had not been so excluded. If he shall affirmatively exercise the option, the contributions of the state, or the contracting city because of his membership, shall be the same as they would have been had he not been so excluded.

(b) Inmates of state institutions who are allowed compensation for such service as they are able to perform.

(c) Persons in state institutions principally for the purpose of training, but who receive compensation.

(d) Independent contractors who are not employees.

(e) Employees serving in employment which does not exceed the equivalent of sixty (60) working days in any fiscal year.

(f) Persons in state service on July 1, 1945, or prior thereto who filed with the board of administration an election not to become members, provided any person so excluded from membership by his own election may on or before, but not after, July 1, 1948, file with the board of administration an election to become a member and receive credit for prior service, and shall become a member of the retirement system on the date of filing such election. Such person shall receive credit for prior service only if his election to become a member is filed with the board on or before, but not after July 1, 1948, and shall have the option of paying to the retirement system all or part of the amount which he would have contributed had he not been so excluded but had been a member to and including the date of filing such election to become a member, plus interest which would have accumulated thereon through such date. Upon the retirement of such person under section 68-801, the pensions provided by contributions of the state under this act shall be the same as if such person affirmatively exercised the option to pay to the retirement system all of that amount with accumulated interest.

(g) Persons directly appointed by the governor, who do not file with the board of administration an election in writing to become members.

(h) Persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government or political subdivision thereof and who are receiving credit in such other system for service, it being the purpose of this section to prevent a person from receiving credit for the same service in two (2) retirement systems supported wholly or in part by public funds, and no person shall receive such credit under any circumstances. Any member of the retirement system who, because of his employment by the state, shall be required to become a member of any such other systems, shall be considered solely for the purposes of section 68-701 (m) as permanently separated from state service. The accumulated contributions of any member who shall have died after becoming a member of such other system and before receiving said accumulated contributions, shall be paid to the beneficiary nominated by him to receive any death benefit payable under section 68-1101. Contributions to the retirement fund under section 68-1307 on the basis of compensation earned by members after the effective date of termination of membership herein because of the membership in such other system, shall be repaid to the fund from which said contributions were made. For the purpose of this section, persons who merely are receiving pensions or retirement allowances, or other payments, from any source whatever, on account of service rendered to some other agency than the state and when such persons were not in state service, shall not

be considered, because of such receipt, members of any other retirement or pension system.

(i) Appointive members of boards and commissions who serve the state or contracting agency on an intermittent basis, and who are paid on a per diem basis.

(j) Persons who become public employees under the meaning of this act after they have reached their sixtieth (60) birthday and have no creditable service in this system, and who do not file with the board of administration an election to become members.

(k) Employees of county hospitals or county rest homes in the sixth and seventh class counties unless they elect to file with the board of administration an election in writing to become members.

History: En. Sec. 5, Ch. 212, L. 1945; amd. Sec. 2, Ch. 287, L. 1947; amd. Sec. 3, Ch. 92, L. 1955; amd. Sec. 2, Ch. 246, L. 1959; amd. Sec. 1, Ch. 150, L. 1967.

Membership

As to elected officers and persons directly appointed by the governor the

Public Employees' Retirement Act provides that they may elect to become members by complying with the provisions of subdivisions (a), (f) and (g) hereof. *Corwin v. Bieswanger*, 126 M 337, 251 P 2d 252, 253.

CHAPTER 3

CONTRACTS BETWEEN MUNICIPAL CORPORATIONS, COUNTIES AND PUBLIC AGENCIES

Section 68-301. Contracts with municipal corporations—election by employee to participate.

68-302. Counties, by contract with board of administration, may participate.

68-303. Other public agencies in state may, by contract with board, participate.

68-301. Contracts with municipal corporations—election by employee to participate. After receiving from the board of administration, a quotation of the approximate contribution provided for in section 68-602, any municipal corporation in the state may participate in the public employees' retirement system, making its employees members of said system, by contract entered into between the legislative body of said municipal corporation and the board of administration of the said retirement system, subject to the provisions of this act. Said contract may include any provisions consistent with this act, necessary in the administration of the retirement system as it affects said employees and municipal corporation. The approval and termination of said contract shall be subject to the following provisions, in addition to the other provisions of this act:

(a) Said legislative body shall adopt a resolution giving notice of intention to approve said contract, which resolution shall contain a summary of the major provisions of the proposed retirement system. Such contract shall not be approved unless and until an election has been held to permit the employees proposed to be included in the retirement system to express, by secret ballot, their approval or disapproval of said retirement proposal. The ballot at such election shall include the summary of the retirement system as set forth in the foregoing resolution. The election shall be con-

ducted in such manner as to permit the city employees proposed to be included in the system separately to express their approval or disapproval thereof. Said election shall be conducted in such manner as shall be prescribed by the legislative body of the city. Approval of the contract shall be by ordinance adopted by the affirmative vote of two-thirds ($\frac{2}{3}$) of the members of said legislative body, not less than twenty (20) days after the adoption of said resolution, or by an ordinance adopted by a majority vote of the electorate of the city voting thereon. The legislative body shall not include in the retirement system any of the city employees above mentioned, a majority of whose members voted to disapprove the proposed system.

(b) Said municipal corporation shall include under said contract all of its employees, except as exclusions in addition to the exclusion specified in this act, may be agreed to between it and the board of administration, said exclusions to be based on groups of employees such as by departments, by duties or by age, and not by individual employees. The board of administration, however, shall have the right to disapprove the exclusion of any group, if in its opinion said exclusion affects adversely the interest of said retirement system. Membership in the retirement system shall be compulsory for all employees included under said contract.

(c) Errors in said contract may be corrected through amendments approved by the adoption of suitable resolutions by the contracting parties. Excluded employees may be included under said contract, by groups, through amendments to said contract approved in the manner prescribed in this section for the approval of contracts. Additional benefits on account of prior services, provided in this act but not included in said contract, may be included in said contract, through amendments approved in the manner prescribed in this section for the approval of contracts, except that an election among employees shall not be required.

(d) Any employee who has been in the employment of an incorporated city or town of this state continuously for a period of at least two (2) years, and which incorporated city or town is not participating in the public employees' retirement system of this state, may advise the legislative body of the city or town, in writing, that he wishes to participate in such system. The legislative body shall, within thirty (30) days after receipt of such written request, adopt the resolution of intention and take such other action as provided for in subsection (a) of this act.

History: En. Sec. 6, Ch. 212, L. 1945;
amd. Sec. 1, Ch. 118, L. 1965.

68-302. Counties, by contract with board of administration, may participate. Any county in this state may participate in the public employees' retirement system, making all or some of its employees members of such system by contract entered into between the board of supervisors of such county and the board of administration of the retirement system. The provisions of this act relating to cities, employees of cities, the entering into contracts between cities and the board, the method of computing benefits and the benefits payable to city employees, and all other provisions of this act which relate to cities which elect to include employees under the public employees' retirement system shall also apply to counties in the same man-

ner to the same extent, and with the same effect as if counties instead of cities were expressly referred to in such provisions.

History: En. Sec. 7, Ch. 212, L. 1945.

68-303. Other public agencies in state may, by contract with board, participate. Any public agency in this state, which is not already authorized to do so, may participate in the public employees' retirement system, making all or some of its employees members of said system, by contract entered into between the governing board or head of such agency, and the board of administration of the retirement system. The provisions of this act relating to cities, employees of cities, the entering into contracts between cities and the board, the method of computing benefits, and the benefits payable to city employees, and all other provisions of this act, which relate to cities which elect to include employees under the public employees' retirement system, shall also apply to public agencies in the same manner, to the same extent, and with the same effect, as if public agencies, instead of cities, were expressly referred to in such provisions.

History: En. Sec. 8, Ch. 212, L. 1945.

CHAPTER 4

COST OF SERVICE, HOW BORNE—CHANGE OF STATUS—MEMBERSHIP— RETIREMENT FUND

- Section 68-401. Cost of service of member borne by employing subdivision
 68-402. Change of status.
 68-403. Monthly reports of change of status of members.
 68-404. Termination of membership.
 68-405. Fund abolished.

68-401. Cost of service of member borne by employing subdivision. An employee of the state or a contracting city shall receive credit, subject to the provisions of this act, for all service rendered by him as an employee of the state or a contracting city, and the cost of benefits based on such service shall be borne by the respective employers in whose service it was rendered, unless the termination of employment by the state or a contracting city is followed by entry into employment by the state if the previous employment was by a contracting city, or contracting city if the previous employment was by the state or a different contracting city, more than one (1) year after such termination, in which event service as applied to a member who is an employee of the state or an employee of a contracting city, shall be limited to service rendered as an employee of the state or of the contracting city, as the case may be. If a person is employed concurrently by more than one contracting city, or by the state and one or more contracting cities, his status under the retirement system shall be determined in the same manner as if he were employed in more than one office or department of the state.

History: En. Sec. 9, Ch. 212, L. 1945;
 amd. Sec. 3, Ch. 186, L. 1951.

68-402. Change of status. It shall be the duty of the head of each

office or department of the state, other than the university, to give immediate notice in writing to the board of administration of the change in status of any member in his office or department resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death. The head of each such office or department shall furnish such other information concerning any member as the board may require. The registrar of the university, or such other official as the university may designate, shall furnish monthly reports to the board of administration showing changes in the status of any and all members employed by the university during the preceeding month, and shall furnish such additional information concerning any or all such members as the board may require in the administration of the retirement system.

History: En. Sec. 10, Ch. 212, L. 1945.

68-403. Monthly reports of change of status of members. The chief administrative officer of a contracting city, or other such person as the legislative body of the city may designate, shall furnish monthly reports to the board of administration showing changes in the status during the preceeding month of any and all members who have been included under the retirement system by the city, and shall furnish such additional information concerning any or all of such members as the board may require in the administration of the retirement system, and further, shall furnish such services of its offices and departments as the board may request in connection with claims by said members against the system.

History: En. Sec. 11, Ch. 212, L. 1945.

68-404. Termination of membership. Each member and each person retired shall be subject to all provisions of this act and to the rules and regulations adopted by the board of administration. Any person who is retired and any person who is credited with less than ten (10) years of public service and who renders less than five (5) years of service in any period of ten (10) consecutive years, or withdraws more than one-fourth ($\frac{1}{4}$) of his normal contributions, ceases to be a member.

History: En. Sec. 12, Ch. 212, L. 1945;
amd. Sec. 3, Ch. 297, L. 1947.

68-405. Fund abolished. The "public employees' retirement fund" is hereby abolished. All contributions paid into the retirement system as the employer agency portion from the state, counties, cities, towns, school districts or other public agencies or political subdivisions shall constitute a pooled or mingled account in the agency fund for payment of all claims made and approved. Whenever the words "retirement fund" appear in this act they shall be taken to mean the public employees' retirement account in the agency fund.

History: En. Sec. 13, Ch. 212, L. 1945;
amd. Sec. 4, Ch. 297, L. 1947; amd. Sec.
197, Ch. 147, L. 1963.

CHAPTER 5

BOARD OF ADMINISTRATION—POWERS AND DUTIES

Section 68-501. Board of administration.

68-501. Board of administration. The board of administration shall consist of five (5) members appointed by the governor, three (3) of which members shall be public employees and shall be members of the retirement system, and two (2) of which shall be members at large. Terms of office shall be for five (5) years provided, however, that those first appointed after this act takes effect shall be for terms, respectively, of one (1), two (2), three (3), four (4), and five (5) years but their successors shall hold office for terms of five (5) years; provided not more than one (1) employee member of the retirement board shall be an employee of the same department, bureau or agency of the state or contracting public agency. Members of the board shall be paid their actual and necessary expenses and those members of the board who are not members of the public employees' retirement system shall be entitled to receive in addition to actual and necessary expenses compensation at the rate of ten dollars (\$10.00) per day.

The attorney general is hereby designated legal counsel for the board.

(a) Vacancy on board—how filled. Any vacancy occurring ninety (90) days or more before the expiration of the term of any member of the retirement board shall be filled by appointment by the governor. The person thus appointed shall serve for the remainder of the unexpired term.

(b) The board may establish such rules and regulations as it deems proper, within the limitations of this act and for its proper administration, operation and enforcement. The board shall elect one (1) of its members president, and shall appoint and fix the compensation of a secretary who shall have the power to administer oaths, and other necessary employees. It shall maintain its office in the city of Helena. A quorum of the board shall be three (3) members. The board may appoint a committee of one or more of its members, which shall have authority to perform routine acts, such as retirement of members and fixing of retirement allowances, approval of death claims and correction of records necessary in the administration of the system in accordance with the provisions of this act and rules and regulations of the board. All expenses of the administration of this act in excess of amount provided by the one dollar (\$1.00) membership fee shall be a charge on the appropriation made from the general fund of the state.

(c) The board shall determine who are employees within the meaning of this act and shall be the sole authority and judge under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system, and shall have exclusive control of the administration and investment of the fund. As soon as practical after the close of each fiscal year, the board shall file with the governor a report of its work for such fiscal year.

(d) Subject to the following and to all other provisions of this act, and such rules and regulations as it may adopt in pursuance thereof,

the board shall determine and may modify allowances for service and disability.

(e) The board of administration shall fix and determine how much service rendered in any fiscal year shall be the equivalent of a year of service and parts thereof, but shall credit one (1) year for two hundred and fifty (250) or more days of service rendered by employees on a per diem basis and one (1) year for ten (10) months or more of service rendered by employees on a monthly basis, but not more than [one] (1) year for all service in any fiscal year. In determining the credit to be granted for service rendered on a part-time basis, for purposes of calculating retirement allowances, the service shall be reduced to a full-time basis according to the service required, in the next preceding sentence, for credit for one (1) year of service. In calculating benefits based on service so determined, except in calculating the additional pension provided in subdivision (g) of section 68-901 compensation earnable shall be taken as the compensation which would be earnable if the employment had been on a full-time basis, and with a compensation derived by multiplying the member's compensation by ratio of full time to the time he was required by his employment to engage in his duties. In calculating the credit to be granted for service rendered on a part-time basis, for purposes of determining qualifications for retirement, and of calculating benefits payable upon death before retirement, the service required in this paragraph for credit for a year of service shall not be used, but instead, a year of service shall be credited for each year during which the member was employed throughout the year on a part-time basis and was engaged in his duties the full amount of time he was required by his employment to be so engaged. Credit for fractional years will be granted to the extent of the fraction derived by dividing the time during which the member was engaged in his duties within the year, by the time he was required by his employment to be so engaged. A member of the legislative assembly and a lieutenant governor of the state of Montana shall, for purposes of calculating retirement allowances and benefits be credited with a year of service for each year so served. Credit for fractional years shall be granted on the basis of the fraction derived by dividing the number of days so served by 250.

(f) Time during which a member is absent from public service without compensation shall not be allowed in computing service: except that time during which a member is a member of the legislative assembly or a lieutenant governor of the state of Montana shall be considered as time spent in public service for the purpose of qualification for and calculation of all benefits provided for in this act; except that time during which a member is absent from public service by reason of having been ordered on duty with the armed forces of the United States, or by reason of voluntary service by the member in said forces or on ships operated by or for the United States government, or by members assigned directly to the Department of War or Defense for duties pursuant to the national defense efforts, having been granted a leave of absence by the agency, department of state, county or city under which said member is employed for such purpose, either during a war involving the United States as a

belligerent or in any other national emergency, and for ninety (90) days thereafter shall be considered as time spent in public service, for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits unless the member elects to contribute and contributes under the retirement system. Any member so absent and until his return within the said ninety (90) days may resign from the system. Any member so absent shall have the right to contribute to said system, either during his service with the armed forces of the United States or in the merchant marine of the United States, and ninety (90) days thereafter or upon his return to the state service, at times and in a manner fixed by the board of administration, amounts equal to the contribution which would have been made by him to the system on the basis of his compensation earnable at the commencement of his absence. If he does so contribute he shall receive credit for public service for such time in the same manner as if he had not been absent from public service. Whenever a member elects to continue his contributions, the state or the contracting city, or county or other agency shall thereupon contribute an amount equal to that which it would have contributed under section 68-1307 or under the contract between the board and the legislative body, as the case may be, if the member had not been absent from state service.

Any member so absent or any member absent from state service by reason of having been ordered by an authorized official of the state of Montana or the United States, to duties outside state service shall be paid upon his request, his accumulated contributions. Such payment shall terminate any election by said member under this section to contribute.

Time during which a member is absent from public service by reason of injury or illness determined within one (1) year after the end of such absence as arising out of and in the course of his employment, shall be considered as spent in public service, for the purpose of qualification for retirement and death benefits, but not for the calculation of retirement benefits, except as he received compensation, as defined in this act and as distinguished from disability indemnity under the Workmen's Compensation Act during the absence, and then only to the extent of compensation received.

(g) Each employee shall file with the board of administration such information affecting his status as a member of the retirement system as the board may require.

(h) Credit for prior service shall be granted to each person other than persons who are employees of the university or of a contracting city at the time of becoming members of the retirement system, who has rendered such service as defined in this act, and who has become a member of the retirement system on January 1, 1946, or within three (3) years after last rendering prior service. Credit for prior service shall be granted to each person who is employed by the university at the time of becoming a member of the retirement system regardless of whether he had been retired under the system prior to the effective date hereof, who has rendered such service as defined in this act, and who has be-

come a member of the retirement system on January 1, 1946, or within three (3) years after last rendering prior service.

Credit for prior service shall be granted to each person who is employed by a contracting city at the time of becoming a member of the system, who has rendered such service as defined in this act, and who has become a member of the retirement system within three (3) years after last rendering prior service. Notwithstanding the three (3) sentences next preceding, credit for prior service shall be granted to each person employed by the state including the university, who became a member while employed on a part-time basis, because of amendments to this retirement act, or who became a member prior to said amendments, because of a change in status to a full-time basis. The credit for prior service to be granted persons employed by a contracting city who are included under the retirement system shall be established by contract between the board and the legislative body of such city; and such credit as may be granted to a person shall be in the form of a percentage, not to exceed the analogous percentage applicable to employees of the state, for each year of prior service. Prior service so credited shall be the basis for a retirement allowance or benefit as provided in this act only if the membership in the retirement system continues unbroken until retirement or retirement allowance or until the granting of such other benefit; provided, that termination of membership by withdrawal of accumulated contributions followed by the redeposit of such contributions upon re-entrance into public service as herein provided shall not constitute a break in membership, but this section shall not be construed to entitle any person to credit as prior service for time during which he was not in public service as defined in this act.

Credit for any prior service, not previously granted, shall be granted to a member upon request for retirement provided that the member has a total of not less than ten (10) years of creditable state service of which not less than three (3) years have been as a contributing member of the retirement system and the retirement allowance does not include credit for all state service prior to July 1, 1945, or in the case of a contracting city prior to the date of the contract, or July 1, 1947, whichever is earlier. Credit for prior service shall be granted to a person who has served as a member of the legislative assembly or as a lieutenant governor of the state of Montana. Proper certification of such service must be furnished.

(i) The management and control of the retirement system shall be vested in the board of administration, and it shall exercise the following powers and perform the following duties:

(j) The board of administration shall keep in convenient form such data as shall be necessary for the actuarial valuation of the retirement fund created by this act. On July 1, 1946, and at the end of every two-year period thereafter, it shall cause to be made an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries under the provision of this act, and shall further cause to be made an actuarial valuation of the assets and liabilities of the public employees' retirement fund herein created, and from time to time shall de-

terminate the rate of interest being earned on the said retirement fund. Upon the basis of any or all of such investigation, valuation, and determination, said board shall adopt such mortality, service and other tables and such interest rate, in lieu of the interest rate specified herein, or any of such items as it shall deem necessary, and shall make such revision in rates of contributions of members as it may deem necessary to comply with the provisions of section 68-701. No adjustment shall be included in the new rates for time prior to the effective date of such revision.

(k) The board shall credit contributions of members of the state and contracting cities with interest at the rate being used under the system on the effective date hereof, compounded each June 30, subject to the foregoing subdivision (j) of section 68-501. At the end of each fiscal year, beginning with the second fiscal year of the operation of the retirement system, it may credit to all contributions held in the retirement fund on June 30 of the then current fiscal year, such interest in excess of said rate provided herein as it may deem proper in the light of the earnings of the retirement fund during such fiscal year, but such additional interest credited during any fiscal year shall not be greater than the excess of said earnings over the interest otherwise credited to contributions during that year. Interest at said rate, compounded annually, subject to said foregoing subdivision (j) hereof, shall be used in the calculation of benefits under any mortality table adopted by the board, regardless of any additional interest allowed on contribution under this paragraph.

In addition to other records and accounts, it shall keep such records and accounts as may be necessary to show at any time:

The total accumulated contributions of members.

The total accumulated contributions of retired members less the annuity payments made to such members.

The accumulated contributions of the state and of contracting cities held for the benefit of members on account of service rendered as members of the retirement system.

All other accumulated contributions of the state and of contracting cities which shall include the amounts available to meet the obligation of the state and of the contracting cities, respectively on account of benefits that have been granted to retired employees and on account of prior service of members.

(l) In addition to rendering the annual report to the governor required by subsection (c) of this section, it shall cause to be published annually a financial statement showing an actuarial valuation of the assets and liabilities of the retirement system created by this act and a statement as to the accumulated cash and securities in the retirement fund as certified by the state auditor, but until all prior service is verified, the board of administration may omit from the financial statement published annually, assets and liabilities resulting from such prior service, and may include assets and liabilities on account of service rendered as members in amounts equal only to accumulated contributions held on account of such service.

History: En. Sec. 14, Ch. 212, L. 1945; amd. Sec. 4, Ch. 92, L. 1955; amd. Sec. 5, Ch. 297, L. 1947; amd. Sec. 1, Ch. 233, L. 1965; amd. Sec. 2, Ch. 271, L. 1969.
4, Ch. 186, L. 1951; amd. Sec. 1, Ch. 224, L. 1951; amd. Sec. 1, Ch. 225, L. 1953;

Compiler's Notes

Subdivision (g) of 68-701, cited in subd. (j) and dealing with normal rate of contribution, has been redesignated as section 68-702.

The compiler has inserted the bracketed word "one" in subdivision (e).

Cross-References

Board of administration continued, sec. 82A-210.

Investment functions of board transferred, sec. 82A-205(4).

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

Counsel Other than Attorney General

Since legislature, by this section, has expressly provided legal counsel and serv-

ices for the board of administration at no expense to the retirement system, the system's trust funds should not be used for payment of attorney's fees. State ex rel. Phil v. Schye, 130 M 537, 305 P 2d 350, 353.

Subdivision (h) Retroactive

Under the amendment by chapter 224 of Laws 1951, subsection (h) was retroactive and a person who retired in 1949 was entitled to a credit for his service prior to January 1, 1945 and his increase in the retirement pension would be from the date of his retirement, not just the date that chapter 224 of Laws 1951 went into effect. Davidson v. Love, 127 M 366, 264 P 2d 705. (See, however, dissenting opinion, 127 M 366, 264 P 2d 705, 708.)

CHAPTER 6**PRIOR SERVICE—ALLOWANCE FOR—COST TO CITIES, COUNTIES AND PUBLIC AGENCIES**

Section 68-601. Prior service of city, county and public agency employees.

68-602. Cost to cities, counties and public agencies.

68-603. Contribution to be made by contracting city.

68-601. Prior service of city, county and public agency employees. The board of administration is hereby empowered to make arrangements with any contracting city for the payment of the prior service liability as computed by the actuary, on such terms as the financial conditions of the contracting city will permit. Should the legislative body of any city having an existing retirement, pension or annuity fund or system, hereafter referred to as the local system, desire to make all or part of the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board of administration in the manner provided in section 68-301 and section 68-602; provided, however, that the employees voting as provided in subdivision (a) of section 68-301 shall be limited to active members of the local system voting as a unit, and approval shall require a two-thirds vote of such employees.

All members of the local system included in said contract shall become members of said employees' retirement system, and shall no longer be members of the local system, and the provisions of this act shall also apply, except that the existing pensions being paid to pensioners or annuitants of the local system on the date of the approval shall be continued and paid at their existing rates by the public employees' retirement system and the liability on this account shall be included in the computation of the prior service liability by the actuary as provided for herein. Subject to the approval of the board of administration, as for all other employees,

the contracting city may elect to continue the local system and to place under the retirement system only a portion of the members of the local system. Any cash and securities to the credit of the local system and held on account of persons who become members of the public employees' retirement system, shall be transferred to the said system as of the date of the approval, the value at which said securities shall be credited to the contracting city, being determined by the board of administration.

The trustees or other administrative head of the local system as of the date of the approval, shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the members, and the relative shares of the members as of that date. Such shares shall be credited to the respective individual accounts of such members in the Montana public employees' retirement system, and administered as if said contributions had been made during membership in said system, except that the annuity provided by said contributions with accumulated interest shall be deducted from the pension which otherwise would be payable on account of prior service. The total of the funds transferred to the Montana public employees' retirement system shall be offset against the prior service liability before determining the contribution to be paid by the contracting city as provided herein. If all the members of the local system become members of the retirement system, the operation of the local system shall be discontinued as of such date as is provided for in the contract between the board and the legislative body of the contracting city.

History: En. Sec. 15, Ch. 212, L. 1945.

68-602. Cost to cities, counties and public agencies. When the legislative body of a municipal corporation desires to consider the participation



of said municipal corporation in the retirement system, said body shall ask the board of administration for a quotation of the approximate contribution to the retirement system which would be required of the municipal corporation because of such participation. Said approximate contribution quoted by the board and the definitive contribution certified by the board as provided in section 68-603 shall be determined by actuarial valuations of the prior and future service liability under the retirement system, on account of employees of such municipal corporation whose memberships are contemplated, in the determination of the approximate contribution, or who become members, in the determination of the definitive contribution, in the same manner as the contribution required of the state on account of its employees was originally determined; provided, that in consideration of the number of employees of the municipal corporation or other circumstances, a different manner of determining said contribution may be adopted by the board, upon recommendation of the actuary. The approximate and definitive contributions are similar to premiums under insurance policies. Said approximate contribution shall be quoted by the board to the municipal corporation, subject to the understanding that the definitive contribution certified by the board after the approval of a contract as provided in section 68-603, may differ from said approximate contribution because of (1) change in number or salaries of employees included; (2) change in prior service benefits; (3) time elapsed between said quotation and effective date of said contract; (4) change in effective date of membership; (5) change in manner of determining contribution; and (6) any other changes in the facts or assumptions upon which said determination was based.

It shall be the duty of the municipal corporation to furnish to the board of administration such data about its employees as the board may deem necessary for such valuations including an investigation into the experience among said employees. It shall also be the duty of the municipal corporation, at the option of the board of administration, to have such valuations and the investigation and valuations required by section 68-501 with respect to its employees, made through a consulting actuary and the municipal corporation, said contract to be subject to the approval of the board, and said valuations to be under the direction of the actuary of the retirement system. The services under said contract shall be deemed services rendered to the municipal corporation and not to the state.

The board of administration, however, may elect to have such valuations made in its office under the direction of the actuary of the retirement system, in lieu of having said valuations made through a consulting actuary. Regardless of how such valuations are made, all data in connection therewith, including work sheets, final results, and reports from said consulting actuary, shall be the property of the board of administration and shall be delivered to said board at the conclusion of said valuations. The expense of determining initially such approximate and definitive contributions, and of the investigation and valuation required by subdivision (j) of section 68-501 with respect to its employees, shall be assessed against and paid by the municipal corporation on whose account it is incurred, said payment being made directly to said consulting actuary for services rendered under said contract and directly to the board of administration for services ren-

dered by its employees. The board may include each year in the contribution required of the contracting city, a reasonable amount which may differ from city to city as determined annually, to cover the costs of administering the system as it affects the active and retired employees of said city. All such payments made to the board of administration by municipal corporations shall be credited to the current appropriation for support of the board and available for expenditure by the board.

History: En. Sec. 16, Ch. 212, L. 1945.

68-603. Contribution to be made by contracting city. The contracting city participating in the system as provided in this act, shall make such contribution to the retirement system, on account of its approval of the participation of its employees in the public employees' retirement system, as may be recommended by the actuary, in either or both fixed sums or percentage of total compensation of said employees who are members, approved by the board of administration and certified by said board to the legislative body of the contracting city, said contribution being also referred to herein as definitive contribution. Said definitive contribution shall be subject to such adjustment as may be necessary on account of any additional prior service credits which the contracting city may desire awarded to employees of such contracting city or on account of experience under the system as determined by the periodical investigation, valuation and determination provided for in subdivision (j) of section 68-501. Said contribution shall be paid to the retirement system at times and in the manner provided in the contract between the system and the contracting city. The legislative body of said contracting city shall budget in each fund, from which compensation for personal services are paid in whole or in part, an amount sufficient to pay the contributions required to the retirement system, and, if moneys are not available in such funds from general revenue sources in sufficient amount for that purpose, shall have authority to budget, levy and collect annually a special tax upon the assessable property within the city in the number of cents per one hundred dollars (\$100.00) of assessable property as will be sufficient to raise the amount estimated by the said legislative body to be required to provide sufficient revenue to meet the obligation of the city to the retirement system under this section and under section 68-301; which said rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied in said city. Any person who is a member or beneficiary of the retirement system on account of the participation of said contracting city, shall have the right to maintain appropriate action or proceeding to require performance of the duty imposed on said legislative body by this section and section 68-301.

History: En. Sec. 17, Ch. 212, L. 1945.

CHAPTER 7

MANAGEMENT OF RETIREMENT FUND

Section 68-701. Management of retirement fund.

68-702. Normal rate of contribution.

68-704. Deduction of members' contributions from state salaries.

- 68-705. Deduction of members' contributions from city payrolls.
- 68-706. Voluntary additional contributions by member.
- 68-707. Annual membership fee.
- 68-708. Withdrawal of contributions by member terminating service before retirement.
- 68-709. Redeposit of withdrawn contributions—reinstatement of membership.
- 68-710. Dormant accounts transferred to pension accumulation fund.

68-701. Management of retirement fund. The retirement fund shall be managed as follows:

(a) The board of administration shall have exclusive control of the administration of said fund except as otherwise provided.

(b) The said fund shall be invested by the state board of land commissioners as part of the long term investment fund.

(c) The board of administration shall deposit monthly in the state treasury all amounts received by it as provided in this section and section 68-1307.

(d) The state treasurer shall be custodian of the retirement fund, subject to the exclusive control of the board of administration as to the administration thereof and the state board of land commissioners as to the investment thereof. All payments from said fund shall be made by him only upon vouchers signed by two (2) board members designated by the board of administration. A duly attested copy of a resolution of the board of administration designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the board of administration.

(e) Interest earned on any cash deposit in a bank by the state treasurer and income on other assets constituting a part of the said fund shall be paid into said fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during said year shall be retained in said fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(f) Except as herein provided, no member and no employee of the board of administration shall have any interest direct, or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of the said board directly or indirectly, for himself or as an agent or partner of others, shall borrow any of its funds or deposits, nor shall any such member or employee in any manner use the same except to make such current and necessary payments as are authorized by said board; nor shall any member or employee of said board become an endorser or surety as to, or in any manner an obligor for investments by the board.

History: En. Sec. 18, Ch. 212, L. 1945; amd. Sec. 6, Ch. 237, L. 1947; amd. Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; amd. Sec. 3, Ch. 246, L. 1959; amd. Sec. 1, Ch. 232, L. 1967; amd. Sec. 1, Ch. 227, L. 1967.

Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(e).

Investment functions of board transferred, sec. 82A-205(4).

68-702. Normal rate of contribution. The normal rate of contribution

of all members shall be equal to five and seventy-five one hundredths per cent (5.75%) of the gross compensation earned.

History: En. Sec. 18 (g), Ch. 212, L. 246, L. 1959; redes. 68-702, Sec. 1, Ch. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 222, L. 1967; amd. Sec. 1, Ch. 227, L. (g), R. C. M. 1947; Sec. 2, Ch. 176, L. 1967.
1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch.

68-703. Repealed—Chapter 227, Laws of 1967.

Repeal

This section (Sec. 18 (h), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (h), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; Sec. 68-703 as redes. by Sec.

1, Ch. 222, L. 1967), relating to the amount receivable on retirement, was repealed by its omission from the amendment of sec. 68-701 made by Sec. 1, Ch. 227, L. 1967. For present law, see sec. 68-901.

68-704. Deduction of members' contributions from state salaries. The board of administration shall certify to the head of each office or department of the state and to the registrar of the university the normal rate of contribution as provided in this act for each member in such office, department, or the university, respectively. The head of each office or department of the state shall apply such rate of contribution to the compensation of each member, and shall certify to the state auditor on each and every payroll the amount to be contributed and shall furnish immediately to the board of administration a copy of each and every such payroll; and each such amount shall be deducted by the head of each office or department and shall be remitted to the board. The registrar of the university shall apply the rate of contribution certified to him by the board to the compensation of each member employed by the university and the contributions so determined shall be deducted by the registrar of the university from the compensation of each such member; each such amount shall be remitted to the board and the registrar of the university shall furnish to the board a copy of each and every salary roll and payroll from which such amounts have been deducted. Each contribution deducted and remitted to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by such payment, except their claims to the benefits to which they may be entitled under the provisions of this act.

History: En. Sec. 18 (i), Ch. 212, L. 3, Ch. 246, L. 1959; amd. & redes. 68-704, 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 Sec. 1, Ch. 222, L. 1967; redes. 68-701 (i), R. C. M. 1947; Sec. 2, Ch. 176, L. (h), Sec. 1, Ch. 227, L. 1967.
1953; amd. Sec. 5, Ch. 92, L. 1955; Sec.

68-705. Deduction of members' contributions from city payrolls. The board of administration shall certify to the city clerk, or other officer designated by the legislative body, of each contracting city the rate of contribution as provided in this act for each member included under the retirement system respectively. The city clerk, or other officer, shall apply the rate of contribution certified to him by the board to the compensation

of each member included in the retirement system and the contribution so determined shall be deducted by the city clerk, or other officer, from the compensation of each such member; each such amount shall be remitted to the board and the city clerk or other officer, shall furnish to the board a copy of each and every salary roll and payroll from which such amounts have been deducted. Each contribution deducted and remitted to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution shall be full and complete discharge and acquittance of all claims to the benefits to which they may be entitled under the provisions of this act.

History: En. Sec. 18 (j), Ch. 212, L. 3, Ch. 246, L. 1959; amd. & redes. 68-705, 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 Sec. 1, Ch. 222, L. 1967; redes. 68-701 (i), (j), R. C. M. 1947; Sec. 2, Ch. 176, L. Sec. 1, Ch. 227, L. 1967. 1953; amd. Sec. 5, Ch. 92, L. 1955; Sec.

68-706. Voluntary additional contributions by member. Subject to the rules and regulations to be established and promulgated by the board of administration, any member may elect to contribute at rates in excess of those provided for in sections 68-704 and 68-705, for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting city any additional financial obligation. The provisions of subdivisions (f) and (g) of section 68-203 shall apply also to additional contributions. The board, upon application shall furnish to such member information concerning the nature and amount of additional benefits to be provided by such additional contributions.

History: En. Sec. 18 (k), Ch. 212, L. Ch. 246, L. 1959; amd. & redes. 68-706, 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 Sec. 1, Ch. 222, L. 1967; amd. & redes. (k), R. C. M. 1947; Sec. 2, Ch. 176, L. 68-701 (j), Sec. 1, Ch. 227, L. 1967. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3,

68-707. Annual membership fee. In addition to the contributions hereinbefore provided to be paid by employees who are members of the retirement system created by this act, every such employee shall pay an annual membership fee of one dollar (\$1) which amount, together with other moneys appropriated for that purpose, shall be used for the support of the board of administration.

History: En. Sec. 18 (l), Ch. 212, L. 246, L. 1959; redes. 68-707, Sec. 1, Ch. 222, 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 L. 1967; redes. 68-701 (k), Sec. 1, Ch. 227, (l), R. C. M. 1947; Sec. 2, Ch. 176, L. L. 1967. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch.

68-708. Withdrawal of contributions by member terminating service before retirement. Should the state service of a member with less than ten (10) years of service be discontinued otherwise than by death or retirement, he shall after the date of discontinuance, be paid such part of his contributions as he demands. The board may, in its discretion, withhold for not more than one (1) year after a member last rendered state service, all or part of his contributions if after a previous discontinuance

of state service he withdrew all or part of his contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in section 68-709.

Any member with ten (10) or more years of service, whose service is discontinued otherwise than by death or retirement, shall have the right to elect within ninety (90) days after such termination of service, whether to allow his accumulated contributions to remain in the retirement fund or to withdraw his accumulated contributions. Upon the qualification for retirement by reason of age or disability of a member with ten (10) or more years of service who has elected to allow his accumulated contributions to remain in the retirement fund after his service has been discontinued otherwise than by death or retirement, he shall receive a retirement allowance computed in accordance with the provisions of section 68-901.

History: En. Sec. 18 (m), Ch. 212, L. 1945; amd. Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (m), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; amd. Sec. 5, Ch. 92, L. 1955; amd. Sec. 3, Ch. 246, L. 1959; amd. & redes. 68-708, Sec. 1, Ch. 222, L. 1967; amd. & redes. 68-701 (1), Sec. 1, Ch. 227, L. 1967.

68-709. Redeposit of withdrawn contributions—reinstatement of membership. Any member may deposit in the retirement fund, in one (1) sum or in not to exceed twelve (12) monthly or twenty-four (24) semi-monthly payments, an amount equal to that which he withdrew therefrom at the last termination of his membership plus an amount equal to the interest which would have been credited to his account had the member not withdrawn his contributions upon termination of membership, subject to minimum monthly or semimonthly payments as fixed by the board of administration. If a member, upon re-entering the retirement system after a termination of his membership, does not elect to make or, having so elected, subsequently does not make such redeposit, he shall re-enter as a new member without credit for any service except the prior service credited to him before said termination but if he does make such redeposit his membership shall be the same as if unbroken by such last termination. Regardless of whether such redeposit is made, the documents held by the retirement system as executed by said member prior to termination of membership shall be held by the system for the same purposes as prior to said termination, and beneficiaries nominated in such documents shall continue unchanged until changed as provided herein.

History: En. Sec. 18 (n), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (n), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; redes. 68-709, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (m), Sec. 1, Ch. 227, L. 1967; amd. Sec. 1, Ch. 98, L. 1965.

68-710. Dormant accounts transferred to pension accumulation fund. The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 68-701 (c) by Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; redes. 68-710, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (n), Sec. 1, Ch. 227, L. 1967.

References
State ex rel. Jardine v. Ford, 120 M 507, 188 P 2d 422, 424.

CHAPTER 8

RETIREMENT—COMPULSORY—VOLUNTARY

Section 68-801. Voluntary service retirement.
68-802. Compulsory retirement.

68-801. Voluntary service retirement. (a) Retirement of a member for service shall be made by the board of administration upon his attaining the age of fifty-five (55) years or more and upon his completion of ten (10) or more years of public service credited under this act and the filing of his written application to the board, subject to the provisions of section 68-901; and provided, however, that the service retirement allowance shall commence on the day following the member's last day of state service or on the first day of the month in which his application is filed with the board of administration, whichever is later.

(b) Notwithstanding any other provision of this act, any person who has been retired for service (as distinguished from disability) under the provisions of this act may be employed in state service in accordance with the laws governing such service in the same manner as a person who has not been so retired.

(c) Any person so employed shall be considered as reinstated from retirement and his retirement allowance shall be canceled forthwith. Upon subsequent retirement he shall be entitled to receive a benefit, as provided in section 68-901, which shall be based upon his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his re-employment. Unless otherwise expressly provided he shall not receive retirement benefits enacted subsequent to the date he initially retires unless he shall have accrued at least two (2) years of creditable service subsequent to his reinstatement from retirement.

History: En. Sec. 19, Ch. 212, L. 1945; amd. Sec. 7, Ch. 297, L. 1947; amd. Sec. 5, Ch. 186, L. 1951; amd. Sec. 1, Ch. 35, L. 1955; amd. Sec. 4, Ch. 246, L. 1959; amd. Sec. 2, Ch. 227, L. 1967; amd. Sec. 3, Ch. 271, L. 1969; amd. Sec. 1, Ch. 116, L. 1971.

District Judge

Retirement of a district judge under this act creates a vacancy which must be filled by the governor. State ex rel. Jardine v. Ford, 120 M 507, 188 P 2d 422.

68-802. Compulsory retirement. Any member forced to retire at age sixty-five (65) or over, not having accumulated ten (10) or more years of public service credited under the Montana public employees' retirement system may, by filing his written application with the board, elect to receive a service retirement allowance subject to the provisions of section 68-901.

History: En. 68-802 by Sec. 1, Ch. 244, L. 1959.

CHAPTER 9

SERVICE AND DISABILITY RETIREMENT ALLOWANCES

Section

68-901. Service retirement allowance.

68-902. Adjusted retirement allowance.

68-901. Service retirement allowance. A member who has reached his sixtieth birthday upon retirement from service is entitled to receive a service retirement allowance which shall consist of either an allowance as provided in subsections (a) through (f) of this section, or an allowance as provided in subsection (g) of this section at the option of the member:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement.

(b) A pension, purchased by the contributions of the state, or the contracting city, equal to one (1) that portion of the annuity purchased by the accumulated normal contributions of the member, or (2) one quarter ($\frac{1}{4}$) of his average final compensation provided his total state service is at least thirty-two and one-half ($32\frac{1}{2}$) years, otherwise, a pension which shall be one one-hundred thirtieth ($1/130$) of his average final compensation multiplied by the number of years of state service; whichever is greater.

(c) An additional pension, purchased by the contributions of the state, for members other than persons who are employees of the university at the time of becoming members, and members employed by a contracting city. Such additional pension shall be equal to one sixty-fifth ($1/65$) of the member's final compensation, multiplied by the number of years of prior service except that if a member retires before attaining the age of sixty (60) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty (60) will purchase at the actual age of retirement.

(d) If a member retires before attaining the age of sixty (60) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this section as deferred to age sixty (60) will purchase at the actual age of retirement.

(e) An additional pension, purchased by contributions of the state, for members who are also employees of the university at the time of becoming members, said additional pension to accrue from the date of retirement under the system regardless of whether said retirement was prior to the effective date hereof. Such additional pension shall be equal to one sixty-fifth ($1/65$) of the average annual compensation earnable by him during the three (3) years preceding retirement, multiplied by the number of years of prior service credited to him, except that if a member retires before attaining the age of sixty (60) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty (60), will purchase at the actual age of retirement. If, however, a member who is employed by the university at the time of becoming a member, shall not have rendered state service before January 1, 1946, his additional pension shall be

based upon one sixty-fifth (1/65) of the average annual compensation earnable by him during the first year of the state service, or such portion thereof as he may have served before January 1, 1946, multiplied by the number of years of prior service credited to him.

(f) An additional pension on account of prior service, purchased by the contributions of the contracting city for members who are also employees of a contracting city as may be provided for under the contract between the board and the contracting city.

(g) A member who reaches his sixtieth birthday upon retirement from service is entitled to receive a service retirement allowance which shall consist of a retirement allowance which shall be equal, at age sixty (60) to one sixty-fifth (1/65) of his final compensation, multiplied by the number of years of service. A member retiring prior to the age of sixty (60) shall be entitled to a retirement allowance which shall be the actuarial equivalent of that portion of his retirement allowance based on his credited service prior to the date of actual retirement and which would have been payable to him at age sixty (60).

MINIMUM GUARANTEE

(h) When a member enters the retirement system with, or without, credit for prior service, and is otherwise eligible for retirement after attaining the age of seventy (70) years, if his final compensation was such that one-half (1/2) thereof is in excess of the total of his retirement allowance, an additional pension for prior service sufficient to cause his retirement allowance to amount to one-half (1/2) of such final compensation shall be paid him on account of prior service, but in no event shall a greater additional pension be paid than will cause the total retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, to amount to the sum of four hundred eighty dollars (\$480) per year. The provisions of this section shall not apply to the members who are employees of a contracting city unless provided for by contract between the board and the contracting city, but if a member be employed by more than one (1) of such cities, his aggregate retirement allowances shall be taken into account in applying said provisions, and said application shall be made as if the member was employed by one or more offices or departments of the state.

DISABILITY RETIREMENT

(i) Any member who has not reached seventy (70) years of age shall be retired for disability if incapacitated for the performance of duty as the result of any injury or disease arising out of and in the course of his employment. Incapacity for performance of duty shall be determined by the board of administration of the public employees' retirement system, and said board of administration shall determine whether such incapacity is the result of injury or disease arising out of and in the course of employment. In the discharge of its duty regarding such determination, the

board or any member thereof or duly authorized examiner or other duly authorized representative of the board shall have power to conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. If the board determines on the evidence that it obtains and application filed that the disability resulted from injury or disease arising out of and in the course of employment, the said member shall be retired forthwith and be paid the benefits provided under the retirement system. Any such member incapacitated for the performance of duty by reason of a cause not included in the immediately preceding sentence, and any other member so incapacitated, regardless of the cause, shall be retired forthwith regardless of age but only after ten (10) years of service to the state, or to the contracting city.

(j) Subject to the requirements as to service and cause of disability stated in subdivision (i) of this section, and upon the application of a member or upon the application of the head of the office or department in which such member is or was last employed, or any other person on behalf of such member, while such member is in state service, within four (4) months after such member's discontinuance of state service, or while such member continuously, from the date of discontinuance of state service to the time of the application or motion, is physically or mentally incapacitated to perform his duties, may apply for, or the board of administration upon its own motion may order, a medical examination to determine the existence of such incapacity. Upon the receipt of such application, the board of administration shall order such medical examination. If the medical examination and other available information show, to the satisfaction of said board, that the member is incapacitated physically or mentally for the performance of his duties in the state service, the said board shall forthwith retire the member for disability. The said board shall secure such medical service and advice as is necessary to carry out the purposes of this section and of sections 68-1001 through 68-1004, and shall pay for such medical services and advice such compensation as the board deems reasonable.

DISABILITY RETIREMENT ALLOWANCE

(k) Upon retirement for disability a member who has attained the age of sixty (60) years shall receive a service retirement allowance as provided by subsections (a) through (g) of this section. Upon retirement of a member for disability resulting from injury or disease arising out of and in the course of employment, such member shall receive a retirement allowance of fifty per centum (50%) of his final compensation; provided, however, that for any period of time for which the industrial accident board has awarded compensation to the member, whether or not such compensation is received in weekly payments or in a lump sum, the retirement allowance shall be twenty-five per centum (25%) of his final compensation and at the end of such period of time shall revert to fifty per centum (50%) as provided above.

(l) Every other member retired for disability shall receive a retirement allowance which shall consist of:

(i) An annuity which shall be equal to one one-hundred thirtieth (1/130) of his final compensation multiplied by the number of years of state service; and

(ii) If, in the opinion of the board of administration, such disability is not due to intemperance, willful misconduct or violation of law on the part of the member, a pension paid from the contributions of the state, or of the contracting city which, together with his annuity provided by his accumulated normal contributions, shall make the retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal to ninety per cent (90%) of one sixty-fifth (1/65) of his final compensation multiplied by the number of years of service credited to him. In no event, however, shall this pension exceed twenty-five per cent (25%) of his final compensation.

(iii) If, in the opinion of the board, the disability is due to intemperance, willful misconduct or violation of law, on the part of the member, and the annuity to which said member is entitled under subdivisions (k) and (l) of this section, is less than two hundred forty dollars (\$240) per year, the board of administration in its discretion, may pay to said member, in one lump sum and in lieu of said annuity, his accumulated contributions.

(m) For purposes of calculating final compensation a member of the legislative assembly and a lieutenant governor of the state of Montana may include as annual compensation all or any portion of the product of his compensation per day as a member, speaker of the house of representatives and president of the senate, including compensation earned prior to July 1, 1969, multiplied by three hundred sixty (360), if he pays thereon the normal contribution provided by this act. For purposes of calculating benefits under this subsection he may include all or any portion of his service as a member of the legislature and a lieutenant governor of the state of Montana using the product of his compensation per day multiplied by three hundred sixty (360) if he pays thereon the normal contribution provided by this act. He may also include his prior service.

History: En. Sec. 20, Ch. 212, L. 1945; amd. Sec. 6, Ch. 186, L. 1951; amd. Sec. 5, Ch. 246, L. 1959; amd. Sec. 1, Ch. 207, L. 1963; amd. Sec. 3, Ch. 227, L. 1967; amd. Sec. 4, Ch. 271, L. 1969; amd. Sec. 2, Ch. 116, L. 1971.

Deduction of Workmen's Compensation Payments

Where person was entitled to benefits under both the disability retirement act and the Workmen's Compensation Act, and the award of the industrial accident board was for permanent partial disability, the retirement board was without authority to deduct such amount from the retirement allowance since it is only authorized where the award of the industrial accident board is for total and permanent

disability. State ex rel. Ebel v. Schye, 130 M 537, 305 P 2d 350, 354.

Duty of Board in Determining Incapacity

Where the industrial accident board made a finding as to incapacity, but did not provide a hearing as required by the statute and by due process, the board had not yet performed its statutory duty and the relator in a mandamus proceeding was entitled to an order commanding the board to grant a hearing. State ex rel. Morgan v. White, 136 M 470, 348 P 2d 991.

Incapacity Not Result of Employment

Where relator suffered from diabetes mellitus, smoker's throat, and arteriosclerosis, it was not an abuse of discretion

for the board of administration to find that resulting incapacity was not the result of injury or disease arising out of and in the course of his employment as a construction engineer. State ex rel. Sanders v. Hill, 141 M 558, 381 P 2d 475.

District court improperly reversed decision of board which refused relator's claim for an occupational disability retirement allowance based upon job-related disability caused by adverse working conditions and granted relator ordinary disability retirement allowance since district court substituted its judgment for that of board and since "disease," as used in this section, does not mean "personality disorders, anxiety reactions, or difficulties in getting along with one's superiors or fellow workers." State ex rel. Bailey v. Grande, 154 M 437, 465 P 2d 834.

Mandamus

While mandamus may compel the board of administration to act, it may not be used to control its discretion and substitute the judgment of the court for that of the board, and refusal of the board to alter its ruling to fit the holding of the district court was not arbitrary or capricious and would not support the writ. State ex rel. Sanders v. Hill, 141 M 558, 381 P 2d 475.

68-902. Adjusted retirement allowance. (1) "Index" for purposes of this section shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959-100) compiled by the Bureau of Labor Statistics, United States Department of Labor, or successor agency.

(2) Effective July 1, 1971, every service or disability retirement allowance then payable to a retired member pursuant to the provisions of section 68-901, R.C.M. 1947, or to his beneficiary pursuant to the provisions of section 68-1005, R.C.M. 1947, shall be increased by a percentage equal to one-half of the percentage increase in the index for 1970 from the index for the calendar year preceding the effective date of retirement of the member.

(3) Effective July 1, 1971, every survivorship annuity then payable to a member's beneficiary pursuant to the provisions of section 68-1101 (e), R.C.M. 1947, shall be increased by a percentage equal to one-half of the percentage increase in the index for 1970 from the index for the calendar year preceding the date of death of the deceased member.

History: En. Sec. 68-902 by Sec. 3, Ch. 116, L. 1971.

Title of Act

An act relating to the public employees' retirement system changing the formula for calculating retirement benefits; increasing the employer contribution to the

retirement fund; increasing retirement allowances to members of the system retired prior to July 1, 1971; requiring a minimum of two (2) years of creditable service after reinstatement from retirement to be eligible for newly enacted retirement benefits; amending sections 68-801, 68-901, 68-1307, R. C. M. 1947, and adding new section 68-902, R. C. M. 1947.

CHAPTER 10

REINSTATEMENT--REDUCTION OF ALLOWANCE--OPTIONAL MODIFICATION OF ALLOWANCES

- Section 68-1001. Reinstatement from disability retirement.
68-1002. Reduction of allowance when employed.

- 68-1008. Effect of refusal of beneficiary to submit to medical examination.
- 68-1004. Payment in case of cancellation of disability allowance.
- 68-1005. Optional modification of retirement allowance.

68-1001. Reinstatement from disability retirement. (a) The board of administration, may, at its pleasure, require any disability beneficiary to undergo medical examination. Such examination shall be made by a physician or surgeon, appointed by the board, at the place of residence of said beneficiary or other place mutually agreed upon. Upon the basis of such examination the board shall determine whether said disability beneficiary is still incapacitated, physically or mentally, for service in the office or department of the state or of the contracting city, where he was employed and in the position held by him when retired for disability, or for duties proposed to be assigned to him. If the board of administration determines that said beneficiary is not so incapacitated, his retirement allowance shall be canceled forthwith. If he was an employee of the state or of the university, he shall be reinstated to the position held by him when retired for disability or to a position in the same classification with duties within his capacity. If he was an employee of a contracting city, the board shall notify the proper official of said city that said disability has been terminated and that said person is eligible for reinstatement to duty. The fact that said person was retired for disability shall not prejudice any right to reinstatement to duty which he may have or claim to have.

(b) In the case of such a member who is an employee of a contracting city, and who for any reason is not so reinstated or is not re-employed by said city in a position subject to the retirement system, he shall be paid the amount of his accumulated contributions at the time of his retirement for disability, with interest, less the total retirement allowance received.

(c) Should a disability beneficiary re-enter the state service and be eligible for membership in the retirement system in accordance with section 68-202, his retirement allowance shall be canceled and he shall immediately become a member of the retirement system. Upon subsequent retirement he shall be entitled to receive a benefit, as provided in section 68-901, which shall be based upon his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his re-employment.

History: En. Sec. 21, Ch. 212, L. 1945; amd. Sec. 6, Ch. 92, L. 1955; amd. Sec. 4, Ch. 227, L. 1967.

Finding that Person No Longer Incapacitated

Where there was substantial evidence to support the trial court's implied finding that the retirement board acted capriciously and arbitrarily in finding that a

person was no longer incapacitated that finding will be upheld on appeal; however, this affirmation does not have the effect of ousting the board from jurisdiction to so find in the future. State ex rel. Ebel v. Schye, 130 M 537, 305 P 2d 350, 358. Special concurring opinion in denying petition for rehearing.

68-1002. Reduction of allowance when employed. Should a disability beneficiary engage in a gainful occupation not in the state service or should he re-enter the state service in a capacity ineligible for membership in the



retirement system, the board of administration shall reduce the amount of his monthly pension to an amount which, when added to the compensation earned monthly by him in such occupation, shall not exceed the amount of his monthly compensation at the time of his retirement. Should the earning capacity of such beneficiary be further altered, the board may further alter his pension to an amount which shall not exceed the amount upon which he was originally retired, but which, subject to such limitation, shall equal, when added to the compensation earned by him, the amount of his compensation at the time of his retirement.

History: En. Sec. 22, Ch. 212, L. 1945;
amd. Sec. 7, Ch. 92, L. 1955.

68-1003. Effect of refusal of beneficiary to submit to medical examination. Should any disability beneficiary refuse to submit to medical examination, his pension may be discontinued until his withdrawal of such refusal, and should such refusal continue for one (1) year his retirement allowance may be canceled.

History: En. Sec. 23, Ch. 212, L. 1945;
amd. Sec. 8, Ch. 92, L. 1955.

68-1004. Payment in case of cancellation of disability allowance. Should the retirement allowance of any disability beneficiary be canceled for any cause other than re-entrance into the state service, he shall be paid the amount of his accumulated contributions at the time of his retirement for disability, with interest, less the total retirement allowance received.

History: En. Sec. 24, Ch. 212, L. 1945;
amd. Sec. 5, Ch. 227, L. 1967.

68-1005. Optional modification of retirement allowance. Until the first payment on account of any retirement allowance is made, and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement system in Helena, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or a beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election, to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

(a) Option 1. If he dies before he receives in annuity payments provided for in section 68-901, the amount of his accumulated contributions as it stood at his retirement, the balance of such accumulated contributions shall be paid to his estate or to such person, having an insurable interest in his life, as he shall nominate by written designation duly executed and filed with the board of administration.

(b) Option 2. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board of administration at the time of his retirement.

(c) Option 3. Upon his death, one-half of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board of administration at the time of his retirement.

(d) Option 4. Such other benefit or benefits shall be paid, either to the beneficiary or to such other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board of administration.

History: En. Sec. 25, Ch. 212, L. 1945.

CHAPTER 11

DEATH BENEFITS

Section 68-1101. Death benefit.

68-1101. Death benefit. Upon the death before retirement of a member while in the state service, or within four (4) months after the discontinuance of state service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from the discontinuance of state service, the retirement system shall be liable for a death benefit, which death benefit shall be paid to such person or other legal entity as he has nominated by written designation duly executed and filed with the retirement board or, if no beneficiary shall be nominated, then pursuant to the provisions of section 68-1201; provided, however, that death benefits shall not be payable to the beneficiary of a member who (a) has elected a joint life annuity option as provided in section 68-1005, or (b) who has received a disability retirement allowance as provided for in paragraphs (j) through (l) of section 68-901, for a period of four (4) months immediately preceding death. Such death benefit shall consist of:

(a) His accumulated contributions, and in addition thereto,

(b) An amount, provided from contributions by the state, or by a contracting city, which shall be equal to one-twelfth (1/12th) of the annual compensation earnable by the deceased during the twelve (12) months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed fifty per centum (50%) of such compensation.

(c) A member, or a beneficiary after death of a member, may elect, by written designation, duly executed and filed with the board of administration to have the death benefit provided in clauses (a) and (b) paid in monthly installments, fixed in number or amount, all subject to such rules and regulations as the board may adopt. Regular interest shall be credited on the unpaid balance of such benefit, at rates then in use under the system as adopted by the board from time to time.

(d) If compensation is awarded by the industrial accident board of the state of Montana by reason of a finding that the member's death re-

sulted from injury or disease arising out of or in the course of employment, the death benefit payable hereunder shall be limited to a refund of the member's accumulated contributions. In any case where the industrial accident board makes a determination that death of a state employee resulted from injury or disease arising out of and in the course of employment and pays compensation therefor, the industrial accident board shall certify its findings and determination to the board of administration of the public employees' retirement system.

(e) Survivorship provision. In lieu of the benefits provided in (a) and (b) above, if the deceased member is qualified by reason of service for a retirement benefit, the beneficiary; if a natural person of legal age, may elect to receive a monthly life annuity. Said monthly life annuity is to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the retirement allowance earned by the deceased member to the date of his death; and provided that this provision be retroactive for all members who had an option for a lesser retirement allowance filed in the retirement system office at the time of their death.

(f) The beneficiary shall have ninety (90) days after receipt of notice from the board of administration that he is entitled to a death benefit, to make the elections provided for in paragraphs (c) and (e) above.

History: En. Sec. 26, Ch. 212, L. 1945; L. 1954; amd. Sec. 2, Ch. 207, L. 1963; amd. Sec. 7, Ch. 186, L. 1961; amd. Sec. 1, Ch. 110, L. 1965; amd. Sec. 2, Ch. 225, L. 1953; amd. Sec. 9, Ch. 92, 6, Ch. 227, L. 1967.

CHAPTER 12

BENEFITS TO WHOM PAID

Section 68-1201. Nomination of beneficiary—payment to next of kin without probate—affidavit required—case of minor—funeral expenses—payment of amount due on effective date.

68-1201. Nomination of beneficiary—payment to next of kin without probate—affidavit required—case of minor—funeral expenses—payment of amount due on effective date. (a) The nomination by a member of a beneficiary under the retirement system may be revoked at the pleasure of the member or beneficiary making the nomination and a different beneficiary nominated by a written instrument duly executed and filed with the board. If no beneficiary shall be nominated or if the estate shall be the beneficiary, and if said estate would not be probated, if no amount were due from the retirement system, all of the said amount due, including retirement allowances accrued but not received prior to death, shall be paid directly without probate to the surviving next of kin of the deceased, or the guardians of said survivor's estate, share and share alike, payment to be made in the same order in which the following groups are listed:

- | | |
|--------------------------|-----------------------------|
| 1. Husband or wife, or | 4. Grandchildren, or |
| 2. Children, or | 5. Brothers and sisters, or |
| 3. Father and mother, or | 6. Nieces and nephews. |

(b) No payment shall be made to persons included in any of said groups if at the date of payment there be living persons in any of the groups preceding it, as listed, and payment to the persons in any group, upon receipt from said persons of an affidavit upon a form supplied by the retirement board, that there are no living individuals in the groups preceding it and that the estate of the deceased will not be probated, shall be in full and complete discharge and acquittance of the board and system on account of said death. If any person entitled to a benefit from the system shall be a minor who has no guardian of his estate, said benefit not to exceed five hundred dollars (\$500.00) may be paid to the person entitled to the custody of a minor to hold for the minor, upon the written statement, duly acknowledged and verified, of such person that the total estate of the minor does not exceed one thousand dollars (\$1,000.00) in value, and such payment shall be full and complete discharge and acquittance of the board and system. Such persons shall account to the minor for the money when the minor reaches the age of majority.

(c) The retirement board, in the event that the whereabouts of the nominated beneficiary cannot be determined, or in the event that the beneficiary be the estate of the deceased person, or if no beneficiary be nominated, may pay to the undertaker who conducted the funeral, or to any person or organization who has paid said undertaker from said person's or organization's own funds, in its discretion all or a portion of any amount payable under the retirement system, but not to exceed the funeral expenses of such deceased person or the portion of such expenses paid by said person or organization as evidenced by the sworn itemized statement of the undertaker and by such other documents as the board may require. Said payment shall be full and complete discharge and acquittance of the board and system up to the amount so paid, anything in this act to the contrary notwithstanding.

(d) Any amount due from the retirement system on the effective date hereof, because of death, may be paid in accordance with the provisions of this section, but only persons living on said effective date shall receive any part of said amount due.

History: En. Sec. 27, Ch. 212, L. 1945.

CHAPTER 13

MISCELLANEOUS PROVISIONS

- Section 68-1301. Retirement benefits not modified by compensation insurance—subrogation provided for.
- 68-1302. Monthly payment of allowance.
- 68-1303. Retirement fund exempt from execution, garnishment, attachment or assignment.
- 68-1304. Right to retirement allowance guaranteed.
- 68-1305. Estimate of age and service.
- 68-1306. Retired members not eligible for retirement allowance while in state service.
- 68-1307. Allocation of money to public employees' retirement fund—disbursement procedure—contributions under this section, how applied.
- 68-1308. Maximum salary considered.
- 68-1309. Transfer from one fund to another.
- 68-1310. Appropriation for administrative expense.

- 68-1311. Budget act not applicable.
- 68-1312. Act, how cited.
- 68-1313. Adjustments authorized.
- 68-1314. State departments to pay to public employees' retirement fund.
- 68-1315. Budget act not applicable.
- 68-1316. State employees paid from federal funds—national guardsmen.
- 68-1317. Reciprocity of credits.
- 68-1318. Eligibility for benefits.
- 68-1319. Transfer of credits.
- 68-1320. Determination of refund and benefits by last system to which employee contributed.

68-1301. Retirement benefits not modified by compensation insurance—subrogation provided for. (a) If an injury, known to result in the retirement of and/or the death of a member of the retirement system is the proximate consequence of the act of a person other than his employer, the board shall have the right to recover from said person, on behalf of the retirement system, an amount which shall be the actuarial equivalent of the benefits which are provided by contributions of the state and for which the retirement system shall be liable because of said injury and/or death. The board of administration may do any and all things necessary to recover on behalf of the retirement system any and all amounts which the board might recover from employees, or from third persons under any provisions of this act, any other provisions of law of the state of Montana, including any provision by which an insurer might recover by subrogation, or otherwise, including the right to commence and prosecute actions, to file liens, to intervene in court proceedings, or to compromise claims before or after commencement of suit, except that any claim in favor of the retirement system against such third person, may be compromised only in such amount as may be approved by a person duly authorized by the board for such purpose. The agreed cost of such service and the expense incidental thereto is a proper charge against the fund out of which the compensation of an injured state employee is paid; and such cost and expense shall be reimbursed to the retirement system by the contracting city by which an injured member is employed.

(b) Any amount recovered by way of subrogation by the employer, workmen's compensation insurer or retirement system shall be applied first to the amounts which the employer or its insurer shall have paid or become obligated to pay, and second, on the amounts which the retirement system shall have paid or become obligated to pay.

(c) Amounts by which retirement and death allowances are reduced under the provisions of section 68-1201 and net amounts recovered from third persons under the provisions of this section, shall be paid by the retirement system to the fund out of which the compensation of the injured member is paid, or to the contracting city which pays the compensation of the injured member as the case may be.

History: En. Sec. 28, Ch. 212, L. 1945.

68-1302. Monthly payment of allowance. A pension, an annuity or retirement allowance granted under the provisions of this act shall be payable in equal monthly installments but a smaller pro rata amount may be paid for part of a month when the pension, annuity or retirement allow-

ance begins after the first day of the month or ends before the last day of the month.

History: En. Sec. 29, Ch. 212, L. 1945.

68-1303. Retirement fund exempt from execution, garnishment, attachment or assignment. The right of a person to a pension, an annuity or a retirement allowance to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this act and the moneys in the fund created under this act shall not be subject to execution, garnishment, attachment, state or municipal taxes, or any other process whatsoever, and shall be unassignable except as in this act specifically provided.

History: En. Sec. 30, Ch. 212, L. 1945;
amd. Sec. 10, Ch. 92, L. 1955.

68-1304. Right to retirement allowance guaranteed. After a member has qualified as to service and disability for retirement for disability, or as to age and service, for retirement for service, nothing shall deprive him of the right to a retirement allowance as determined under this act. Such retirement allowance and qualification therefor, shall be subject otherwise to the provision of this act.

History: En. Sec. 31, Ch. 212, L. 1945.

68-1305. Estimate of age and service. If it shall be impracticable for the board of administration to determine from the records the length of service, the compensation or the age of any members, or if any member refuses or fails to give the board a statement of his state service, his compensation or his age, the said board may estimate, for the purposes of this act, such length of service, compensation or age.

History: En. Sec. 32, Ch. 212, L. 1945.

68-1306. Retired members not eligible for retirement allowance while in state service. No person who has been retired for service or disability shall be paid any retirement allowance during the time which he receives compensation for service rendered by him to the state or to a contracting city after the date of his retirement.

History: En. Sec. 33, Ch. 212, L. 1945;
amd. Sec. 11, Ch. 92, L. 1955.

68-1307. Allocation of money to public employees' retirement fund—disbursement procedure—contributions under this section, how applied. (a) During the biennium for which appropriations of money are made by this legislative assembly, there shall be paid monthly by each department, board, commission, bureau, or other agency of the state into the public employees' retirement fund out of moneys appropriated from the state general fund, a sum equal to four and three-tenths per cent (4.3%) of the total compensation paid members of the retirement system from July 1, 1971 through June 30, 1973; four and six-tenths per cent (4.6%) from July 1, 1973 through June 30, 1975; and, four and nine-tenths per cent (4.9%) of total compensation thereafter. In computing the amount

of compensation upon which these percentages shall be reckoned, there shall be included a sum equal to the amount of compensation which would have been paid to members of the system who elect to continue and do continue their contributions to the system and who are absent with the armed forces of the United States, so long as such absence shall be continued.

(b) Each department, board, commission, bureau or other agency of the state shall certify to the state auditor at the end of each month the total amount of compensation paid members of the retirement system, including that which would have been paid to members who are absent in the armed forces of the United States. The state auditor shall thereupon draw a warrant upon the state treasurer for the contribution due from the state. Said warrants shall be drawn on funds appropriated to each department, board, commission, bureau of other agency of the state to the credit of the public employees' retirement fund and the state treasurer shall deposit the amount thereof in said retirement fund.

(c) Contributions made to the retirement system under this section shall be applied by the board of administration to meet the state's obligations under the system in such order and amount as said board shall determine; provided, however, that said contributions shall be first applied to the liability accruing because of state service rendered during such year and on account of pensions provided for in section 68-901, such amounts to be determined by actuarial valuation as computed by the actuary of the said board.

(d) Each department, board, commission, bureau or other agency of the state under whose supervision there are state employees who are paid either fully or in part from federal funds, but who are not subject to the federal retirement system, shall certify to the state auditor at the end of each month the total amount of compensation paid such employees who are members of the retirement system; and the state auditor shall thereupon draw a warrant upon the state treasurer for the amount of contribution due from the state with respect to the compensation of such employees, regardless of whether such compensation is partly or entirely derived from federal funds. Such warrant shall be drawn on funds appropriated to such department, board, commission, bureau or other agency of the state to the credit of the public employees' retirement fund and the treasurer shall deposit the amount thereof in said retirement fund.

History: En. Sec. 35, Ch. 212, L. 1945; Ch. 214, L. 1967; amd. Sec. 5, Ch. 271, amd. Sec. 8, Ch. 297, L. 1947; amd. Sec. 1, L. 1969; amd. Sec. 4, Ch. 116, L. 1971.

68-1308. Maximum salary considered. From and after July 1, 1955, for the purpose of computing the total amounts of compensation of members under the provisions of section 68-1307, all compensation shall be used.

History: En. Sec. 36, Ch. 212, L. 1945; amd. Sec. 12, Ch. 92, L. 1955.

68-1309. Transfer from one fund to another. Any fund out of which payments are made under the provisions of this act may be reimbursed to

the extent of such payments by transfer of a sufficient sum for such reimbursement from another fund or funds under the control of the same disbursing officer. The disbursing officer shall certify to the state auditor amount or amounts to be thus transferred, the fund or funds from and to which the transfer is to be made, and the auditor shall thereupon make the transfer as directed in the certificate.

History: En. Sec. 37, Ch. 212, L. 1945.

68-1310. Appropriation for administrative expense. Out of any money in the state treasury not otherwise appropriated there is hereby appropriated the sum of \$35,000.00 for the purpose of defraying the administrative expense of the act, including the salary of the secretary and other employees and the necessary expenses of the board of administration. The above appropriation is for the coming biennium only. Thereafter, it shall be the duty of each and every state board, commission, department and institution whose employees are subject to the retirement system created by this act to include in their budget and request for legislative appropriations, an amount necessary to defray the state's part of the costs of this act for employees in their respective departments, and to the end that the legislature may make definite appropriation for the cost incurred by each board, department or institution whose employees are within the retirement system created by this act.

History: En. Sec. 38, Ch. 212, L. 1945.

68-1311. Budget act not applicable. This act shall be valid and effective despite any provisions in the State Budget Act to the contrary.

History: En. Sec. 39, Ch. 212, L. 1945.

68-1312. Act, how cited. This act may be cited as the Public Employees' Retirement Act.

History: En. Sec. 40, Ch. 212, L. 1945.

68-1313. Adjustments authorized. If more or less than the correct amount of contribution required by this act of members, the state, or contracting city, is or has been paid, proper adjustment shall be made in connection with the subsequent payments, or such adjustments may be made by direct cash payments between the member, state or contracting city, in connection with whom the error was made, and the board of administration; adjustments to correct any other errors in payments to or by the board of administration may be made in the same manner.

History: En. Sec. 41, Ch. 212, L. 1945.

68-1314. State departments to pay to public employees' retirement fund. All departments, boards, bureaus, commissions, and other agencies of the state shall pay to the public employees' retirement fund out of moneys heretofore appropriated to them and unexpended during the biennium July 1, 1945, to July 1, 1947, or hereafter appropriated to them a sum equal to the percentage of total compensation paid members of the retirement system and designated in the provisions of sections 68-101 to 68-1313.

History: En. Sec. 1, Ch. 40, L. 1947.

68-1315. Budget act not applicable. This act shall be valid and effective despite any provisions in the State Budget Act to the contrary.

History: En. Sec. 2, Ch. 40, L. 1947.

68-1316. State employees paid from federal funds—national guardsmen. (a) A state employee whose compensation is paid either fully or in part from federal funds, but who is not subject to the federal retirement system, shall be entitled to all benefits and be required to make all employee contributions under the public employees' retirement system of the state of Montana, based upon the full salary received by such employee, including that portion of salary paid from federal funds.

(b) From and after July 1, 1961, all employees of the Montana army and air national guard shall become members on the first day of employment, except those employees who are in state service on July 1, 1961, or prior thereto, who have filed with the board of administration an election not to become members, provided any person so excluded from membership by his own election may at any time, while he is an employee, file with the board of administration an election to become a member and receive credit for prior service under the provisions of section 68-501(h).

History: En. Sec. 9, Ch. 297, L. 1947;
and, Sec. 1, Ch. 181, L. 1961.

68-1317. Reciprocity of credits. Any person who has acquired, or shall acquire, credits or equities toward a retirement allowance, death benefit, or refund of contributions under the public employees' retirement system of Montana, or under the teachers' retirement system of the state of Montana, who terminates his employment in a department, agency, or division of the state of Montana, or in a school, college, or university in the state of Montana, covered by any of said systems and shall become employed in a department, agency, division, school, college or university covered by another of said systems, shall be entitled to have applied in such other system all his said credits or equities in accordance with and to the extent set forth in this act, provided that the same shall not have been forfeited by withdrawal unless the forfeited credits shall have been reinstated as by law provided. Any person who is concurrently employed by employers under both of said systems shall be entitled to establish credits or equities in each of said systems in accordance with and to the extent set forth in this act.

History: En. Sec. 1, Ch. 132, L. 1953.

68-1318. Eligibility for benefits. Eligibility of any such person for a retirement allowance, or for a death benefit or for a disability benefit, or for a refund of contributions shall be governed by the provisions of the act creating the system to which the person last made contributions, provided however that said system, in determining such eligibility, shall take into account the entire length of service rendered by such person for which he shall have been granted credit under both of said systems.

History: En. Sec. 2, Ch. 132, L. 1953.

68-1319. Transfer of credits. Upon transfer of an employee from one system to another, his accumulated contributions or accumulated normal contributions, and his service credits, both prior and membership, as certified by either system shall be transferred to the system to which the employee transfers.

History: En. Sec. 3, Ch. 132, L. 1953.

68-1320. Determination of refund and benefits by last system to which employee contributed. The amount of any refund, retirement allowance, death benefits, or disability allowance to which any such employee shall be entitled, shall be determined according to the rules of the system to which he last contributed.

History: En. Sec. 4, Ch. 132, L. 1953.





GAME WARDENS' RETIREMENT

Note. The Game Wardens' Retirement System Act is compiled in Title 68, chapter 14, Revised Codes of Montana, 1947.

CHAPTER 14

GAME WARDENS' RETIREMENT SYSTEM

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| | 68-1426. | Payments under other laws. |
| | 68-1427. | Optional retirement allowance. |
| | 68-1428. | Transfer of dormant accounts. |
| | 68-1429. | State public employees' retirement system, ineligibility of member. |

68-1401. Definition of terms. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amount deducted from the salary of a contributor and paid into the account, and standing to his credit in the account together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired state game warden," any person in receipt of a retirement allowance under this act.

"Board," the Montana state game wardens' retirement board.

"Contributor," any person who has accumulated deductions in the account, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana state game wardens' retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years service or more; provided that such contributor has reached the age of fifty-five (55) years.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service as a state game warden of the Montana fish and game department; provided that all members must retire at age sixty (60).

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana fish and game moneys in the earmarked revenue fund.

History: En. Sec. 1, Ch. 130, L. 1963.

68-1402. State game warden defined. Whenever used in this act, state game warden means all state fish and game wardens hired by the state fish and game commission and shall include all warden supervisory personnel whose salaries or compensation is paid out of the Montana fish and game moneys in the earmarked revenue fund.

History: En. Sec. 2, Ch. 130, L. 1963.

68-1403. Establishment of Montana state game wardens' retirement system. A retirement system is hereby established for Montana state game wardens.

History: En. Sec. 3, Ch. 130, L. 1963.

68-1404. Montana state game wardens' retirement board. There is hereby created a Montana state game wardens' retirement board, hereinafter referred to as the "board." The board shall consist of five (5) members who shall be the same persons as those who compose the board of administration of the public employees' retirement system

History: En. Sec. 4, Ch. 130, L. 1963.

68-1405. Payments into the Montana game wardens' retirement system. All contributions by the state fish and game moneys in the ear-

marked revenue fund and all contributions by the state game wardens as designated by section 68-1401, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the board, who shall credit such payments to the Montana state game wardens' retirement account in the agency fund. Such board shall have exclusive control of the administration of such account. The state treasurer shall be custodian of the account, subject to the exclusive control of the board as to the administration thereof and the state board of land commissioners as to the investment thereof. Whenever there is on deposit in the Montana state game wardens' retirement account a sum in excess of twenty-five thousand dollars (\$25,000), such excess will be invested by the state board of land commissioners as part of the long-term investment fund and any of the account less than twenty-five thousand dollars (\$25,000) in amount shall be invested by the state board of land commissioners as part of the short-term investment fund when so directed by the Montana game wardens' retirement board.

History: En. Sec. 5, Ch. 130, L. 1963.

Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(e).

Investment functions of board transferred, sec. 82A-205(4).

68-1406. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary and is charged within the limitations of this act for its proper administration, operation and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors and to the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 130, L. 1963.

68-1407. Membership. Every state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid wholly out of the Montana fish and game moneys in the earmarked revenue fund and who is assigned to law enforcement in the Montana fish and game department, shall be required to become a member of the retirement system established by this act, on July 1, 1963, and thereafter when first becoming a state game warden. Contributions by members under this act shall commence with the first payroll after July 1, 1963. If any person becomes a state game warden subsequent to July 1, 1963, or shall have been at any time heretofore a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this act. All state game wardens shall be members of the retirement system so long as actively employed in such capacity.

History: En. Sec. 7, Ch. 130, L. 1963.

68-1408. State game wardens' retirement account. There is hereby created state game wardens' retirement account in the agency fund and all

moneys received under the provisions of this act shall be credited to said account. In addition thereto, all moneys any state game warden, employed as such on July 1, 1963, has heretofore paid into the public employees' retirement system, whether as a state game warden or otherwise, is hereby appropriated therefrom and credited to the account hereby created and any such state game warden shall be allowed service credit hereunder for any such previous service, including other Montana state, county or city service. The state treasurer shall, upon the passage of this act, ascertain the amount heretofore paid by state game wardens or as deputy game wardens as aforesaid and transfer the amount so paid to the account hereby created. The state examiner shall audit this transfer of funds.

History: En. Sec. 8, Ch. 130, L. 1963.

68-1409. Payments by contributors. Every member shall be required to contribute into the account a sum equal to seven per cent (7%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account; provided that [for] any member who contributes after twenty-five (25) years of service, the contributor's retirement allowance shall be increased in an amount as calculated on an actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his retirement.

History: En. Sec. 9, Ch. 130, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "for" in the proviso.

68-1410. Contributions by the state of Montana. (a) There shall be paid out of the Montana fish and game moneys in the earmarked revenue fund, monthly, by the state treasurer, a sum equal to seven per cent (7%) of the total amount of each Montana game wardens' retirement system member's salary, the same to be credited to the retirement account created by this act. (b) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits shall be paid by the state of Montana out of the fish and game moneys in the earmarked revenue fund, made on the basis of budgets submitted by the board.

History: En. Sec. 10, Ch. 130, L. 1963.

68-1411. Retirement. Any member in service who has completed at least twenty-five (25) years of creditable service, and who has reached the age of fifty-five (55) years, may retire on service retirement allowance upon written application to the board, setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the filing thereof, he desires to be retired; provided that retirement shall be compulsory at age sixty (60).

History: En. Sec. 11, Ch. 130, L. 1963.

68-1412. Voluntary retirement. If a contributor has served twenty (20) years of creditable service as a state game warden, and has reached the age of fifty-five (55) years, he is hereby granted the option and privilege of retiring and, in such case, his retirement allowance shall be proportionately reduced.

History: En. Sec. 12, Ch. 130, L. 1963.

68-1413. Retirement allowance. Upon retirement from service a service retirement allowance shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of his retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half ($\frac{1}{2}$) of his average final salary with twenty-five (25) years' service.

History: En. Sec. 13, Ch. 130, L. 1963;
amd. Sec. 1, Ch. 111, L. 1967.

68-1414. Disability retirement allowance. In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; provided that if such total disability is a direct result of any service to the Montana fish and game department in line of duty, and the contributor has had over ten (10) years of service, then such state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half ($\frac{1}{2}$) of his average final salary.

History: En. Sec. 14, Ch. 130, L. 1963.

68-1415. Involuntary retirement allowance. Should a contributor be discontinued from service, not voluntarily, after having completed ten (10) years of total service, but before reaching retirement age, he shall, upon filing of an application in the manner herein provided for retirement, be paid as he may elect as follows: (a) the full amount of accumulated deductions standing to his credit; or (b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

History: En. Sec. 15, Ch. 130, L. 1963.

68-1416. Refunds in case of resignation or discharge. When a contributor resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 130, L. 1963.

68-1417. Payments upon death attributable to employment. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of: (a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and (b) the actuarial equivalent of a state annuity which when added to the member's annuity salary of the contributor, less the amount which is paid to any such beneficiary under the Workmen's Compensation Act of the state of Montana,

during the period such compensation is paid or payable; provided that in no event shall a beneficiary be paid for more than fifteen (15) years or past the age of sixty-five (65) years, whichever is the greater.

History: En. Sec. 17, Ch. 130, L. 1963.

68-1418. Payments in case of death from natural causes. (a) If a retired state game warden dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 68-1415.

History: En. Sec. 18, Ch. 130, L. 1963.

68-1419. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed unless by act of the legislative assembly of the state of Montana.

History: En. Sec. 19, Ch. 130, L. 1963.

68-1420. Exemption from taxes and execution. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable.

History: En. Sec. 20, Ch. 130, L. 1963.

68-1421. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board up until, but not after, the time of retirement.

History: En. Sec. 21, Ch. 130, L. 1963.

68-1422. Service in the armed forces of the United States. Any state game warden now in or hereafter inducted into the armed forces of the United States, shall have the option: (a) to continue his payments into the account; or (b) allow the board to make his payments for him during such military service, in which event he shall repay the account the full amount of such payments upon his return to state game warden status, and such repayments must be made within two (2) years after his return to active state game warden status; provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

History: En. Sec. 22, Ch. 130, L. 1963.

68-1423. Fraud—correction of errors. (a) No person shall knowingly make any false statement or falsify or permit to be falsified any record or

records of the retirement system herein established in any attempt to defraud such system; (b) should any such change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Any person violating any of the provisions of subsection (a) of this section shall be guilty of misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) or suffer imprisonment not exceeding one year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 130, L. 1963.

68-1424. Restrictions on payments. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend, for as long a time as it sees fit, disbursement of the state annuity. Where the illness or injuries causing a contributor to be retired, or where the death of the contributor is directly and proximately caused by such contributor's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke or suspend for as long a time as it sees fit, disbursement of the state annuity.

History: En. Sec. 24, Ch. 130, L. 1963.

68-1425. Subrogation. Where a third person is liable to the member or [any] of his dependents for injury or death, the state shall be subrogated to the right of the dependents against such third person; but only to the extent of the state annuity payable under this act by the state. Any recovery against such third person, in excess of the state annuity theretofore paid or thereafter to be paid by the state shall be paid forthwith to the contributor or the person designated by such contributor.

History: En. Sec. 25, Ch. 130, L. 1963.

Compiler's Note

The compiler inserted the bracketed word "any" in the first sentence.

68-1426. Payments under other laws. All payments provided for in this act are in addition to any other benefits now or hereafter provided for under the Workmen's Compensation Act of the state of Montana.

History: En. Sec. 26, Ch. 130, L. 1963.

68-1427. Optional retirement allowance. Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent

of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

Option No. 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option No. 2. Upon his death, one-half ($\frac{1}{2}$) of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option No. 3. Such other benefit or benefits shall be paid either to the beneficiary or to such other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

History: En. Sec. 27, Ch. 130, L. 1963.

68-1428. Transfer of dormant accounts. The board may in its discretion transfer the accumulated deductions of a member to the employer's account in the Montana state game wardens' retirement account in the agency fund if the member's account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the accumulated deductions shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 28, Ch. 130, L. 1963.

68-1429. State public employees' retirement system, ineligibility of member. Each state game warden shall, after July 1, 1963, become a member of this retirement system and thereafter no state game warden shall be eligible to membership to the state public employees' retirement system and the provisions of said law shall not apply to Montana state game wardens.

History: En. Sec. 29, Ch. 130, L. 1963.





JUDGES' RETIREMENT

Note. The Judges' Retirement System Act is compiled in Title 93, chapter 11, Revised Codes of Montana, 1947.

CHAPTER 11

MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS

- Section 93-1107. Judges' retirement system—definitions.
93-1108. Montana judges' retirement system.
93-1109. Montana judges' retirement board.
93-1110. Administrative expenses.
93-1111. Payments into the Montana judges' retirement fund—investment.
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93-1114. Service allowance.
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93-1128. Service in the armed forces of the United States.
93-1129. Fraud—correction of errors.
93-1130. Call of retired judge for duty.
93-1131. Optional retirement allowance.
93-1132. Transfer of dormant accounts to pension accumulation fund.

93-1107. Judges' retirement system—definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions"—the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary"—shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired judge"—any person in receipt of a retirement allowance under this act.

"Board"—the Montana judges' retirement board.

"Penalty retirement age"—seventy (70) years of age.

"Contributor"—any person who has accumulated deductions in the fund standing to his credit.

"Final salary"—the annual salary for the office retired from as of the date of retirement.

"Actuarial equivalent"—the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Fund"—the Montana judges' retirement fund.

"Involuntary retirement"—a retirement not for cause and before retirement age.

"Member's annuity"—payments for life derived from contributions made by the contributor.

"Retirement allowance"—the state annuity plus the member's annuity.

"State annuity"—payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 289, L. 1967;
amd. Sec. 1, Ch. 218, L. 1969.

93-1108. Montana judges' retirement system. A retirement system is hereby established for the judges of the district court and justices of the supreme court of the state of Montana.

History: En. Sec. 2, Ch. 289, L. 1967.

93-1109. Montana judges' retirement board. There is hereby created a Montana judges' retirement board, hereinafter referred to as the "board." The board shall consist of five (5) members who shall be the same persons as those who compose the board of administration of the public employees' retirement system.

History: En. Sec. 3, Ch. 289, L. 1967.

93-1110. Administrative expenses. (1) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits, shall be paid from the Montana judges' retirement account.

(2) Before July 15, 1970 and before July 15 of each year thereafter, the board shall compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the Montana judges' retirement account to the public employees' retirement system account in the earmarked revenue fund.

History: En. Sec. 4, Ch. 289, L. 1967;
amd. Sec. 1, Ch. 23, L. 1969.

93-1111. Payments into the Montana judges' retirement fund—investment. All appropriations made by the state of Montana, all contributions by members of the Montana judges, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the secretary of the public employees' retirement system board (PERS), who shall credit said payments to the Montana judges' retirement fund. Said funds may be co-mingled with funds of the PERS, but shall be earmarked as judges' retirement fund.

History: En. Sec. 5, Ch. 289, L. 1967.

93-1112. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act for its proper administration, operation, and enforcement, and shall be the authority

under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the fund, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 289, L. 1967.

93-1113. Membership. (a) Any judge or justice, who has, previous to the adoption of this act, been a member of the PERS, may elect to remain under that system; such election to be made in writing to the PERS board within three (3) months after the effective date of this act.

(b) Every judge or justice who was in service in either a district court or a supreme court of the state of Montana, prior to July 1, 1967, shall have the option and he may elect to make back payments to the date when he first entered the service of the judiciary. Such back payments may be spread over a period of five (5) years by having the regular pay-roll deduction of the contributor increased in an amount equal to the total of his back payments divided by sixty (60), which deduction increase shall be credited to such back payments owing, and shall be continued until the full amount of such back payments shall have been completed. Any such deduction increase may be anticipated in part or in full by the contributor at any time and must be anticipated in full at the time of retirement before a retirement allowance is granted, and if not so anticipated and paid in full then a member's retirement allowance shall be calculated for the total years and months on which contributions have been made in accordance with section 93-1118. Every contributor who shall elect to make such back payments shall receive full credit under this act for all contributions made into the fund and for all service credits to which he might thereby be entitled.

History: En. Sec. 7, Ch. 289, L. 1967.

93-1114. Service allowance. In computing the length of service of a contributor for retirement purposes, full credit shall be given to each contributor for each year of service rendered to the judiciary including service rendered prior to July 1, 1967, upon complying with the provisions of this act. As soon as practicable, the retirement board shall issue to each original member a certificate certifying the aggregate length of his service prior to July 1, 1967. Such certificate shall be final and conclusive as to his prior service unless thereafter modified by the board upon application of the contributor.

History: En. Sec. 8, Ch. 289, L. 1967.

93-1115. Payments by contributors. Every member shall be required to contribute into the fund a sum equal to six per cent (6%) of his monthly salary, which sum shall be deducted from his salary and credited to his account in the fund.

History: En. Sec. 9, Ch. 289, L. 1967.

93-1116. Contributions by the state of Montana. The state of Montana shall monthly contribute to the fund a sum equal to six per cent (6%) of the salary of each member of the Montana judiciary retirement system. In addition to the above, three-quarters ($\frac{3}{4}$) of the fees collected under section 25-232, as amended, and section 25-233, as amended, shall be paid into the county treasurer on the first Monday of each month as provided in section 25-203, and the other one-quarter shall be transmitted by the clerk to the secretary of the PERS board on the first Monday of each month, and by him credited to the judicial retirement fund. The fees collected under section 82-503, as amended, shall be by the clerk of the supreme court paid by him, three-quarters ($\frac{3}{4}$) into the state treasury to be credited to the general fund, and one-quarter ($\frac{1}{4}$) of which shall be paid by him to the secretary of the PERS board, which shall be credited to the credit of the judicial retirement fund. The full amount of such fund as created and accumulated is hereby set aside to be used exclusively for the purpose of paying the accrued retirement and expenses provided for herein.

History: En. Sec. 10, Ch. 289, L. 1967.

93-1117. Vesting of proportional retirement. Any member who has completed at least five (5) years or more service, and has reached the age of sixty-five (65), may retire and receive the proportional retirement allowances provided in section 93-1118.

History: En. Sec. 11, Ch. 289, L. 1967.

93-1118. Retirement allowance. Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of three and one-third per cent ($3\frac{1}{3}\%$) per year of his final salary for the first fifteen (15) years' service, and one per cent (1%) per year for each year's service thereafter.

History: En. Sec. 12, Ch. 289, L. 1967.

93-1119. Disability retirement allowance. In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; provided, that if such total disability is a direct result of any service to the Montana judiciary in line of duty, then such judge or justice who is totally and permanently disabled shall be retired on total retirement allowance of a minimum of one-half ($\frac{1}{2}$) of his final salary or the allowance provided in section 93-1118, whichever is greater. In the event of any disability not caused in the line of duty after attaining the age of sixty (60) years, the maximum monthly payment shall be the retirement allowance as provided in section 93-1118.

History: En. Sec. 13, Ch. 289, L. 1967.

93-1120. Involuntary retirement allowance. Should a contributor be discontinued from service, not voluntarily, after having completed five (5) years of total service, but before reaching retirement age, he shall, upon filing of application in the manner herein provided for retirement, be paid as he may elect as follows:

(a) the full amount of accumulated deductions standing to his credit; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

History: En. Sec. 14, Ch. 289, L. 1967.

93-1121. Penalty retirement allowance. Any judge or justice who becomes eligible for retirement hereunder, but fails to make application therefor, prior to his attaining the age of seventy (70) years, shall automatically waive all retirement benefits, and shall receive a return of only such moneys equal to the accumulated deduction contributed by him; save and except that any judge or justice, who is over the age of seventy (70) years, at the time of the effective date of this act, or who shall attain such age before the expiration of his term, shall be permitted to serve out the balance of his existing term, without forfeiting said retirement. At the termination of the said existing term, if such member has failed to make application for retirement under this act, he shall automatically waive all retirement benefits hereunder, and shall receive a return of only such moneys equal to the accumulated deduction contributed by him.

History: En. Sec. 15, Ch. 289, L. 1967.

93-1122. Refunds in case of resignation or discharge. Where a contributor resigns of his own volition, or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 289, L. 1967.

93-1123. Payments upon death. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of:

(a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and

(b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to the allowance provided for in section 93-1118.

History: En. Sec. 17, Ch. 289, L. 1967.

93-1124. Payments in case of death from natural cause. (a) If the retired judge or justice dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(b) If a member dies before reaching retirement age, his beneficiary

shall be entitled to the actuarial equivalent of the options as provided in section 93-1120.

History: En. Sec. 18, Ch. 289, L. 1967.

93-1125. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed unless by act of the legislative assembly of the state of Montana. No retirement allowances can be approved by the board while the member is drawing full compensation as a judge or justice.

History: En. Sec. 19, Ch. 289, L. 1967.

93-1126. Exemption from taxes and execution. Any money received or to be paid as a member's annuity, state annuity or return of deductions or the right to any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable.

History: En. Sec. 20, Ch. 289, L. 1967.

93-1127. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board.

History: En. Sec. 21, Ch. 289, L. 1967.

93-1128. Service in the armed forces of the United States. Any member of the Montana judiciary now in or hereafter inducted into the armed forces of the United States, shall have the option:

(a) to continue his payments into the fund; or

(b) allow the board to make his payments for him during such military service, in which event he shall repay the fund the full amount of such payments upon his return to the Montana judiciary, and such repayments must be made within two (2) years after his return to the judiciary provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

History: En. Sec. 22, Ch. 289, L. 1967.

93-1129. Fraud—correction of errors. (a) No person shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(b) Should any such change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Any person violating any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) or

suffer imprisonment not exceeding one (1) year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 289, L. 1967.

93-1130. Call of retired judge for duty. Every judge or justice receiving retirement pay under the provisions of this act, shall, if physically and mentally able, be subject to call by the supreme court or the chief justice thereof to aid and assist the supreme court or any district court under such directions as the supreme court may give, including the examination of the facts and cases before the court, the examination of authorities cited and the preparation of opinions for and on behalf of the court, which opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of such court and such court and such retired judge or justice may, subject to any rule which the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases in so far as not inconsistent with the constitution of the state. Such retired judge or justice when called to service as herein provided shall be reimbursed for his actual expenses, if any, in responding to such call.

History: En. Sec. 24, Ch. 289, L. 1967.

93-1131. Optional retirement allowance. Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or a beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement, allowance, payable throughout life with one of the following options:

Option 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 2. Upon his death, one-half ($\frac{1}{2}$) of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 3. Such other benefit or benefits shall be paid, either to the beneficiary or to such person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

History: En. Sec. 25, Ch. 289, L. 1967.

93-1132. Transfer of dormant accounts to pension accumulation fund. The board may in its discretion transfer the savings account of a member

to the pension accumulation fund if the account has been dormant for a period of ten (10) years, provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 27, Ch. 289, L. 1967.





SOCIAL SECURITY PROVISIONS

Note. The act providing coverage of officers and employees under the Federal Social Security Act is compiled in Title 59, chapter 11, Revised Codes of Montana, 1947.

CHAPTER 11

FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

- Section 59-1101. Declaration of policy.
59-1102. Definitions.
59-1102.1. Referendum and certification.
59-1103. Federal-state agreement.
59-1103.1. Contributions by state employees.
59-1104. Plans for coverage of employees of political subdivisions.
59-1105. Contribution account.
59-1106. Costs of administration.
59-1107. Rules and regulations.
59-1108. Persons excepted from act.
59-1109. Supplementation of social security benefits.
59-1110. Eligibility of staff and teachers—payroll deductions.
59-1111. For purposes of act, each state institution of higher education deemed to have a separate retirement system—referendum—administration.
59-1112. Social security coverage not to prejudice other rights under other laws.
59-1113. General repeal—purpose.

59-1101. Declaration of policy. In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana, and to the dependents and survivors of such employees, the basic protection accorded to others by the old age and survivors' insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this act, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act. It is also the policy of the legislature that the protection afforded employees in positions covered by the public employees' retirement system of the state of Montana on the date and agreement under this act is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

History: En. Sec. 1, Ch. 44, L. 1953;
amd. Sec. 1, Ch. 270, L. 1955.

NOTE.—The Social Security Act referred to in this section will be found in

the United States Code, Title 42, sec. 301 et seq.

Collateral References

States—§ 87.

51 C.J.S. States § 91.

48 Am. Jur. 520, Social Security Unemployment Insurance and Retirement Funds, §§ 9 et seq.

Acceptance of, or assertion of right to, pension or retirement as abandonment of public office or employment. 76 ALR 2d 1312.

59-1102. Definitions. For the purposes of this act—

(a) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act;

(b) The term "employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this act would constitute "employment" as defined in the Social Security Act; or, (2) service which under the Social Security Act may not be included in an agreement between the state and the secretary of health, education and welfare entered into under this act. Service performed by civilian employees of national guard units is specifically included within the term "employment." Service which under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act shall be included in the term "employment" if and when the governor issues, with respect to such service, a certificate to the secretary of health, education, and welfare pursuant to section 59-1102.1(b);

(c) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision thereof;

(d) The term "state agency" means the board of administration of the public employees' retirement system of the state of Montana;

(e) The term "secretary of health, education, and welfare" means the secretary of the United States department of health, education, and welfare and includes any individual to whom the secretary of health, education, and welfare has delegated any of his functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom such administrator had delegated any such function;

(f) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations thereof, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision. The term shall include special districts or

authorities created by the legislature or local governments such as but not limited to school districts, housing authorities, etc.;

(g) The term "Social Security Act" means the act of Congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended; and

(h) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the Federal Internal Revenue Code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of such Code of 1939 and section 3101 of such Code of 1954, and as such codes may from time to time be amended.

History: En. Sec. 2, Ch. 44, L. 1953; amd. Sec. 2, Ch. 270, L. 1955.

NOTE.—Section 218 of the Social Security Act referred to in this section will be found in the United States Code, Title 42, sec. 418.

Subchapter A of Chapter 9 of the Federal Internal Revenue Code of 1939 referred to in this section is superseded by subchapters A and B of Chapter 21 of the

Federal Internal Revenue Code of 1954, known as the Federal Insurance Contributions Act, which is compiled in the United States Code as Title 26, sec. 3101 et seq.

Collateral References

Right to unemployment compensation of retired employee receiving pension or the like. 32 ALR 2d 901.

59-1102.1. Referendum and certification. (a) Pursuant to section 218 (d)(6) of the Social Security Act, the public employees' retirement system of the state of Montana shall, for the purposes of this act, be deemed to constitute a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered thereby. With respect to employees of the state the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision he shall authorize a referendum upon request of the governing body of such subdivision; and in either case the referendum shall be conducted, and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this act. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this act.

(b) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218(d)(3) of

the Social Security Act have been met, the governor shall so certify to the secretary of health, education, and welfare.

History: En. as Sec. 3, Ch. 44, L. 1953
by Sec. 3, Ch. 270, L. 1955.

59-1103. Federal-state agreement. (a) The state agency, with the approval of the governor, is hereby authorized to enter on behalf of the state into an agreement with the secretary of health, education, and welfare, consistent with the terms and provisions of this act, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in section 59-1102. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health, education, and welfare shall agree upon, but, except as may be otherwise required or permitted by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of title II of the Social Security Act;

(2) The state will pay to the secretary of the treasury of the United States, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages (as defined in section 59-1102, equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services, is entered into, except that such effective date may be made retroactive to the extent permitted by section 218(f) of the Social Security Act, as defined herein;

(4) All services which constitute employment as defined in section 59-1102 and are performed in the employ of the state by employees of the state, shall be covered by the agreement; and

(5) All services which (A) constitute employment as defined in section 59-1102, (B) are performed in the employ of a political subdivision of the state, and (C) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under section 59-1104 shall be covered by the agreement.

History: En. Sec. 3, Ch. 44, L. 1953; by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, amd. and redes. as Sec. 4, Ch. 44, L. 1953; Ch. 97, L. 1959.

NOTE.—Title II of the Social Security Act referred to in this section will be found in the United States Code, Title 42, sec. 401 et seq. Section 218 appears as Title 42, sec. 418.

59-1103.1. Contributions by state employees. (a) Every employee of the state whose services are covered by an agreement entered into under section 59-1103 shall be required to pay for the period of such coverage, contributions, with respect to wages (as defined in section 59-1102), equal to the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after the enactment of this act.

(b) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

History: En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963.

NOTE.—The Federal Insurance Contributions Act referred to in this section will be found in the United States Code, Title 26, sec. 3101 et seq.

59-1104. Plans for coverage of employees of political subdivisions.

(a) Each political subdivision of the state shall submit for approval by the state agency a plan for extending the benefits of title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision. Each such plan and any amendment thereof shall be approved by the state agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under section 59-1103;

(2) it provides that all services which constitute employment as defined in section 59-1102 and are performed in the employ of the political subdivisions by employees thereof, shall be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(C) of the Social Security Act is applicable;

(3) it specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(4) it provides for such methods of administration of the plan by

the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports;

(6) it authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

(b) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(c)(1) Each political subdivision as to which a plan has been approved under this section shall pay with respect to wages (as defined in section 59-1102), at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section 59-1102.1.

(2) Each political subdivision required to make payment under paragraph (1) of this subsection shall, in consideration of the employee's retention in, or entry upon, employment after enactment of this act, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in section 59-1102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contributions from his wages as and when paid. Contributions so collected shall partially discharge the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of six per centum (6%) per annum, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor, or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision by any department, agency or fund of the state.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963.

NOTE.—Section 218 of the Social Security Act referred to in this section will be found in the United States Code, Title 42, sec. 418. The Federal Insurance Contributions Act appears as Title 26, sec. 3101 et seq.

59-1105. Contribution account. (a) There is hereby established, in place of the fund known as the contribution fund, a contribution account in the agency fund. Such account shall consist of and there shall be deposited in such account:

(1) all contributions, interest and penalties collected under sections 59-1103.1 and 59-1104;

(2) all moneys appropriated thereto by the legislative assembly of the state of Montana; and

(3) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account and all other moneys received for the account from any other source. All moneys in the account shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority and jurisdiction over the account, including all moneys and property or securities belonging thereto; it shall invest the same in investments of the same character as are permitted by section 79-1202 of this code for the investment of moneys in the long-term investment fund and shall credit all interest and income heretofore or hereafter earned thereon in excess of that which, in the judgment of the state agency, may be needed for the purposes set forth in subdivision (b) of this section, to the earmarked revenue fund or funds of the state agency, to be used by it either to defray the cost of administering the state agency, or for distribution pro rata to the contributing state departments, political subdivisions, school districts and instrumentalities, as it may determine, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

(b) The contribution account shall be used and administered exclusively for the purpose of this act. Subject to the provisions of subdivision (a) of this section, withdrawals from such account shall be made for, and solely for (A) payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under section 59-1103; (B) payment of refunds provided for in section 59-1103.1; and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 59-1102.1 and the Social Security Act.

(d) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(e) Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the controller in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969.
amd. and redes. as Sec. 7, Ch. 44, L. 1953
by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200,

Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(d).

59-1106. Costs of administration. All costs allocable to the administration of this chapter shall be charged to the earmarked revenue fund, social security division account, and so much of such costs as are not defrayed by interest and income earned upon the contributions fund which has been credited to said earmarked revenue fund, social security division account, as provided in section 59-1105, shall be paid to the state agency for deposit to the earmarked revenue fund, social security division account by each department of the state and by the participating divisions and instrumentalities and political subdivisions of the state pro rata according to their respective contributions.

History: En. Sec. 6, Ch. 44, L. 1953; Ch. 248, L. 1965; amd. Sec. 2, Ch. 109, L. 1967.
amd. and redes. as Sec. 8, Ch. 44, L. 1953
by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5,

59-1107. Rules and regulations. The state agency shall make and publish such rules and regulations, not inconsistent with the provisions of this act, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this act.

History: En. Sec. 7, Ch. 44, L. 1953;
amd. and redes. as Sec. 9, Ch. 44, L. 1953
by Sec. 9, Ch. 270, L. 1955.

59-1108. Persons excepted from act. This act shall not apply to, and there shall be excluded from the operation thereof, all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firemen, policemen or highway patrolmen.

History: En. Sec. 8, Ch. 44, L. 1953;
amd. and redes. as Sec. 10, Ch. 44, L. 1953
by Sec. 10, Ch. 270, L. 1955; amd. Sec. 3,
Ch. 97, L. 1959.

Cross-Reference

Application to teachers and staff members in public schools and institutions of higher learning, secs. 59-1109 to 59-1113.

59-1109. Supplementation of social security benefits. Any school district of the state, may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum pursuant to section 218 of the Federal Social Security Act, among the members of the staff and teachers of the school or schools under the jurisdiction of such board of trustees. If the majority of votes cast in any such referendum indicates that said staff and teachers approve, then such board of trustees shall certify to the state board of equalization (or such other agency as may be by legislation designated to administer such program and enter into agreements for extensions of social security coverage) that the conditions for

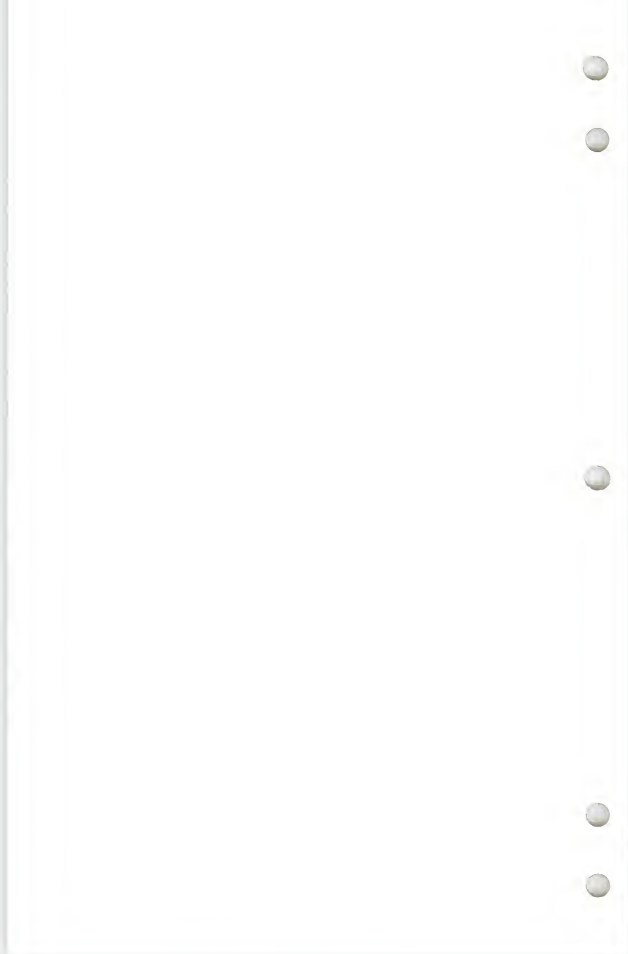
coverage by social security, required by section 218 of the Social Security Act have been complied with.

History: En. Sec. 1, Ch. 271, L. 1955.

tion will be found in the United States Code, Title 42, sec. 418.

NOTE.—Section 218 of the Federal Social Security Act referred to in this sec-

59-1110. Eligibility of staff and teachers—payroll deductions. Pursuant to such certification, the staff and teachers of any such district shall be eligible for coverage under the provisions of the Federal Social Security Act, and the fiscal officer of such district shall thereafter collect the contributions required under the Federal Social Security Act, section



218, by payroll deduction from the staff and teachers and from the school district as employer; and said funds and accounts shall be deposited with the state board of equalization, or such other agency as may be designated by the legislature to administer Social Security Act coverage in this state, and held in the contributions' fund as provided by sections 59-1101 to 59-1108. For the purposes of this act, the contributions with respect to services, equivalent to the employer's tax established by the Federal Social Security Act shall be the first obligation against any state funds received for school support by any school district, high school district or county high school, and shall first be paid therefrom.

History: En. Sec. 2, Ch. 271, L. 1955;
am. Sec. 1, Ch. 253, L. 1965.

59-1111. For purposes of act, each state institution of higher education deemed to have a separate retirement system—referendum—administration. (a) For the purposes of this section of this act, there shall be deemed to be a separate retirement system for the teachers of each state institution of higher education in Montana, and each such institution and the teachers therein shall be treated separately and independently from the other such institutions and teachers.

(b) On request of the president of any such institution, the governor shall designate an agency or individual to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requisites therefore prescribed by section 218 of the Federal Social Security Act.

(c) If the majority of votes cast in any such referendum indicates that the majority of voters desire it, then the governor shall certify to the federal secretary of health, education, and welfare that each of the conditions set forth in section 218 of the Social Security Act has been complied with in respect to the retirement system voting in that referendum.

(d) Upon such certification the governor shall designate an official to enter into an agreement (or a modification or supplement to an existing agreement, or both such modification and supplement) with the appropriate officers of the federal government, pursuant to section 218 of the said Social Security Act, to secure coverage thereunder for the retirement system with respect to which such certification has been made. Such agreements may be made retroactive to the extent permissible under the Social Security Act.

(e) The fiscal officer for each institution for whose retirement system an agreement has been so made shall collect the contributions required by said section 218 as follows: (1) from the teachers in the retirement system of that institution, by payroll deductions and (2) for the state from any appropriations for salaries, or otherwise made available, to the institution involved. In the absence of specific provision in the appropriations for, or budget of, such an institution for such contributions, the state board of education shall designate the funds from which any such required contributions shall be made and the budgetary items to which they shall be allocated.

(f) In the event that any relevant provisions of federal law are amended or superseded, then the provisions hereof which relate to such law shall be applied to such amended law or such superseding law.

History: En. Sec. 3, Ch. 271, L. 1955.

NOTE.—Section 218 of the Federal Social Security Act referred to in this section will be found in the United States Code, Title 42, sec. 418.

Compiler's Note

The words "federal secretary of health, education, and welfare" in subsection (c) mean the secretary of the United States department of health, education, and welfare.

59-1112. Social security coverage not to prejudice other rights under other laws. Nothing in this act shall be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state; it being the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits, and to permit members of teaching or staff personnel in any district or institution of higher education so electing to become a member of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one such system, and no benefits received under either system shall be deducted from any other or separate system.

History: En. Sec. 4, Ch. 271, L. 1955.

59-1113. General repeal—purpose. All acts and parts of acts in conflict herewith are hereby repealed to the extent of any such conflict, it being the purpose of this act to bring under the provisions of sections 59-1101 to 59-1108, or any act amendatory thereof, teachers and staff members of districts and institutions of higher education for supplemental social security coverage as provided by the Federal Social Security Act.

History: En. Sec. 5, Ch. 271, L. 1955.





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